HOUSE OF REPRESENTATIVES—*Thursday, November 7, 1991*

The House met at 12 noon.

The Right Reverend Laszlo Tokes, bishop of Nagyvarad, the Hungarian Reformed Church of Romania, Nagyvarad, Romania offered the following prayer:

Heavenly Father, we, who have been entrusted to handle the affairs of state and world, give thanks to You that You are Guardian of this Nation and all creation. On this day, too, in our endeavors and deliberations, we heed Your voice. We take guidance from the example of Jesus Christ, Your only Son, who so loved his people, his nation, and the world that he gave his life for them.

You taught us to pray with these words: "Thy Kingdom come." You called us "brethren." As citizens of Your world, we beseech You to bless our labors. Grant that we may serve in the best interest of those who entrusted us. Let our works proclaim Your glory, as a sign that "the Kingdom of Heaven is at hand."

We pray for them, all Your people, the world over. In their prosperity, let them not forsake You or their fellow man. We pray for the suffering and the oppressed, the "little ones" of Christ. Let them not become alienated from You, but let them understand that You are with them always. Make us Your blessed instruments in all these things, as we turn now to our responsibilities for the affairs of state and world. Let us "Rejoice with those who rejoice, weep with those who weep"—1 Romans 12:15. In the name of the Father, and of the Son, and of the Holy Ghost. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. The gentleman from Florida [Mr. LEWIS] will please come forward and lead the House in the Pledge of Allegiance.

Mr. LEWIS of Florida led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2707) "An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1992, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate numbered 3, 7, 9, 13, 26, 29, 35, 38, 41, 49, 52, 64, 65, 68, 73, 79, 87, 90, 93, 94, 95, 96, 99, 112, 122, 124, 126, 130, 132, 133, 135, 140, 141, 142, 143, 151, 156, 158, 161, 164, 176, 179, 181, 188, 200, 205, 214, 218, and 219, to the above-entitled bill.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 455. An Act to authorize a national program to reduce the threat to human health posed by exposure to contaminants in the air indoors.

REV. LASZLO TOKES, BISHOP OF THE HUNGARIAN REFORMED CHURCH

(Mr. LANTOS asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. LANTOS. Mr. Speaker, Bishop Laszlo Tokes, who honors us with his presence today, is one of the authentic heroes of the democratic revolutions in Central and Eastern Europe. It was he who sparked the uprising against the totalitarian regime of Nicolae Ceausescu, and with enormous personal courage, it was he who led all the democratic forces in Romania to get rid of this bloody dictatorial Communist regime.

It would be a joy to report, Mr. Speaker, that we now have a full and democratic regime in place, but we do not. Many of the oppressive tactics are still present. Religious and ethnic minorities are still suppressed. Bishop Tokes himself is under constant threat of terrorist attacks and assassination. This body cannot rest until everyone living in Romania of all ethnic, religious, and other groups will be able to practice their full human and civil rights.

Mr. Speaker, we are honored to have one of the authentic democratic revolutionary heroes of Central and Eastern Europe with us. His voice carries across the globe. It is a voice of brotherhood, compassion, fellowship, and peace. This House is honored to have him.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair wishes to welcome all of our guests in the gallery but reminds them that House rules prevent any of our guests from expressing approval or disapproval by applause or otherwise of anything said on the House floor. We appreciate your cooperation.

THE REPUBLICAN CONGRESS

(Mr. HASTERT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HASTERT. Mr. Speaker, in a column that appeared in the Washington Post last week, David Broder wrote that if Republicans were given the chance, they would govern effectively.

In an article that will appear in the Heritage Foundation's Policy Review, Republican Leader BOB MICHEL tells us how Republicans will govern when given the chance.

A Republican Congress will embark on a truly historic reform of the House. It will restore many cherished values of American democracy that have been lost over 37 years of Democrat control.

Chief among those values is the right to free and open debate. Too many times in this House debate on crucial issues is curtailed, frustrating many who have no voice in the process.

"PLAUSIBLE DENIAL"

(Mr. DYMALLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DYMALLY. Mr. Speaker, some years ago, the House of Representatives looked into the assassination of President John F. Kennedy. It did so through the establishment of the House Select Committee on Assassinations.

That committee concluded that evidence indicated there had been a conspiracy to kill President Kennedy; however, the Department of Justice did not pursue an investigation, and the assassination remained a mystery until the publication of a new book, "Plausible Denial," written by Mark Lane.

It clarifies a lot of questions, and I highly recommend that you read "Plausible Denial" by Mark Lane.

The following is what Kirkus Reviews says about Mark Lane in his at-

tempts to answer the question: Was the CIA involved in the assassination of JFK?

The author of "Rush to Judgment," the first book to attack the Warren Commission Report on the assassination of JFK, takes on the CIA's possible role in the murder, by way of a Florida jury trial.

It was Mark Lane who found a CIA conspiracy behind the Jonestown massacre—he was there—in 1979's "The Strongest Poison" and FBI complicity in the 1977's "Code Name 'Zorro': The Murder of Martin Luther King, Jr." This time out he offers his most damning version yet of CIA wrongdoing. Lane assembles his evidence with a trial lawyer's cool skill and builds to a riveting climax: an eyewitness account of CIA spy E. Howard Hunt paying off a CIA-backed Cuban assassination team in Dallas the night before the murder and clearly setting up Jack Ruby—before the assassination—to kill Oswald, the patsy, who never fired a shot. Lane's evidence is drawn from a trial he conducted in Florida in 1978 while defending a small political magazine, Spotlight, which had lost a $650,000 defamation suit brought against it by Hunt. The magazine claimed that Hunt was in Dallas at the time of the assassination while Hunt claimed he was in Washington, D.C. When the appellate court vacated the decision and called for a second trial, Spotlight's owner called Lane to defend him. Lane saw a case he might lose, but also his first opportunity ever to cross-examine top figures in Lane's assassination scenario. And indeed he deposes CIA Directors Richard Helms and Stansfield Turner, G. Gordon Liddy, Hunt himself—and strikes gold in CIA agent Marita Lorenz, who accompanied two cars full of guns and assassins from Miami to Dallas and, under oath, names all of them, then tells of a followup talk with the proud top assassin who pulled off "the really big one * * * we killed the president. * * *"

Well-reasoned at every point, Lane's convincing report sounds like the last word on the assassination. * * *

HYPOCRISY IN CONGRESS: THE DOUBLE STANDARD MUST END

(Mr. HEFLEY asked and was given permission to address the House for 1 minute.)

Mr. HEFLEY. Mr. Speaker, the game is up. The electorate has caught on. And this body had better sit up and take notice.

In the wake of the check bouncing scandal, the restaurant scandal, and the Thomas confirmation fiasco, the American people are taking a long, hard look at the Congress of the United States. They see a double standard in which the Congress has created a myriad of laws by which they must abide yet they find that Congress has conveniently exempted itself from many of those laws.

The list is lengthy, Mr. Speaker: the Privacy Act, the Ethics in Government Act, the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1988, the Minimum Wage Act, and the Equal Pay Act. And there are more. Acts of Congress which apply to our constituents should apply to the Congress. It might make us more careful about the burdens we place on our constituents if we had to carry them also.

That chorus of jeers out there is meant for Congress, Mr. Speaker. The American people are fed up with the double standard and they want reform now. I would urge the Democratic leadership of this body to heed this sound advice and begin the process to restore credibility to this institution.

ANNIVERSARY OF THE ELECTION OF JEANNETTE RANKIN, FIRST WOMAN ELECTED TO CONGRESS

(Mr. WILLIAMS asked and was given permission to address the House for 1 minute.)

Mr. WILLIAMS. Mr. Speaker, on this day 75 years ago, Americans first elected a woman to the U.S. House of Representatives. On November 7, 1916, Montanans elected Jeannette Rankin to the Congress of the United States before women in America had the right to vote.

□ 1210

During her first term, it was for her and for others of her colleagues to decide whether or not to join in declaring World War I. More than 50 of Jeannette Rankin's colleagues joined her in voting against World War I.

Following that term in Congress, Jeannette voluntarily left the House and did some political work back home and around the country working for women and children and working for her passion, peace.

More than a quarter of a century later Montanans again elected this courageous woman, Jeannette Rankin, to Congress, and it fell to her on December 8, 1941, to cast the lone vote against World War II. Jeannette Rankin said at that time, "As a woman, I can't go to war, and therefore I refuse to vote to send anyone else."

Today, three-quarters of a century after her election, we recognize Jeannette Rankin and her courage.

EFFECTIVE, RESPONSIBLE CAMPAIGN FINANCE REFORM NEEDED NOW

(Mr. BARRETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARRETT. Mr. Speaker, at the beginning of this session, campaign finance reform was a priority issue. It is November and these long overdue reforms have not yet reached the floor.

Reforms are needed to improve the election process and restore public confidence in Congress. The American people are now calling for term limits because they feel it's the only way to get new leaders into office. Actually, the inability of challengers to win elections is largely due to the advantages that incumbents have in campaigning.

We need to create a better balance among those who influence Congress through their hold on the campaign fund purse strings. The majority of a candidate's finances should come from the voting district, not from PAC's and special interest lobbies.

Soft money contributions and bundling of contributions can't be tolerated. Members' consent should be required for union political spending. Most importantly, the public should not be forced to pay higher taxes to finance campaigns.

Now is the time to take proactive steps to restore the Nation's faith in Congress and pass effective, responsible campaign finance reform.

PRESIDENT SHOULD STAY HOME LONG ENOUGH TO WORK WITH CONGRESS

(Mr. WISE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WISE. Mr. Speaker, the President has announced when he returns from NATO he will park the plane for a while, and I am glad to see that Air Force One frequent flier points are going to be used to go to some different destinations.

We are trading in the flights to Tokyo, for instance, perhaps to Toledo. He might want to consider the ticket that was going to be used to Auckland to go to Austin. Brisbane, he might try Boston instead. Sidney, come to Sutton, WV. We have got some problems you ought to see.

The fact is that there are 300,000 jobs less in this economy than there were when George Bush raised his right hand to take the oath of office 3 years ago. The fact is, as George Bush said, there is a lot that needs to be done in this recession. I am glad to say, Mr. President, while you have been gone, welcome home, but while you have been gone the Democrats and Chairman ROSTENKOWSKI are putting out a middle class tax relief bill.

You said you want to keep your eye on Congress. Just watch. Hope you are going to be home long enough to work with us.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MONTGOMERY). The Chair would like to remind Members on both side of the aisle not to address the President of the United States directly. Remarks should be addressed to the Chair.

CAMPAIGN REFORM

(Mr. ALLARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALLARD. Mr. Speaker, I understand that the Democrats have come

up with a campaign finance proposal that would impose a $600 thousand spending limit on campaigns for the House of Representatives. I agree that campaign spending should be limited, but that limit should be decided by the people of the voting district.

Imposing an arbitrary spending cap on a race in Colorado, or in Wyoming, and then expecting it to work in Los Angeles or New York just is not practical. A spending cap should be determined by how much money the people of the district are willing to contribute. Requiring candidates to raise more funds from individuals in the voting district would not only curtail skyrocketing campaign spending, it would encourage concentrating on grassroots get-out-the-vote efforts.

To give you an example, last year in my race in Colorado—which was an open seat targeted by both national parties—I raised about $375,000 and my opponent raised $460,000. The $600,000 spending limit proposed by the Democrats would not have affected my race, nor would it have affected any of the other five races in Colorado. In other words, it would be meaningless for Congressional candidates in Colorado to have a $600,000 limit.

What we need to remember is that most of us in the House today were elected because we knocked on doors, had breakfast with local organizations, and earned the support of our own neighbors. Now we have the chance to emphasize that style of campaign again.

Mr. Speaker, what we need is comprehensive campaign finance reform—a reform which encourages greater emphasis on raising money in the home district.

TIME FOR PRESIDENT TO EARN DOMESTIC FREQUENT FLIER MILES

(Mr. ESPY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ESPY. Mr. Speaker, one of our biggest airlines has a motto: "We love to fly, and it shows."

Well, I think the same thing can be said with respect to our President. He has the same motto. He flies around the world taking care of everyone else's business but our own. This week he goes to Rome. Now, that is Rome, Italy. But I represent Rome, MS. There are Rome, Mississippis all across the United States, with unemployment rates that exceed 11.3 percent.

The President vetoes unemployment bills here at home. The people need relief. Rome, MS, might not be the capital of Italy, but it could be said that it is the heart of America, where we should be focusing our attention and our priorities.

Mr. Speaker, 2 million Americans have exhausted their unemployment benefits, 1 in 10 are on food stamps, and 8 million of our children are impoverished enough to be on welfare.

It is way past time for our President to start earning some more domestic frequent flier miles.

HIGHWAY BILL

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, if Republicans controlled this institution the country would have a highway bill today which would provide both roads and jobs to our people. But Republicans do not control this body, nor do we control the Senate and because the President cannot sign what Congress has not done, the American people don't have a highway bill.

Instead of a highway bill the Democrats are offering the American people a seminar on pork. While the Nation needs roads and bridges, the Democrats squabble amongst themselves over the House brand of bacon, called special projects. While the Nation needs tax cuts to stimulate the economy, the Democrats argue amongst themselves over how to increase taxes to pay for their pork. While American workers want jobs—jobs the highway bill would provide—the Democrats offer delay.

Mr. Speaker, the highway bill is just another example of how the Democrats control this institution but are unable to make it work. When the Republicans control this body, the American people won't have to wait while we squabble among ourselves over how to make the taxpayer foot the bill for pork, when all the country needs is a highway bill which the American people have already paid for.

PASS CIVIL RIGHTS ACT OF 1991

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the President used racial politics in 1988. The psychological message was simple but powerful. No. 1, crime is rampant; No. 2, streets are dangerous; and, No. 3, if you elect Mike Dukakis, you will have a Willie Horton on every street corner.

White-black, black-white. The politics of race, the politics of fear, the politics of division.

Mr. Speaker, this political strategy may win elections, but it is destroying America. Today Congress should do the right thing, the right way. Congress should pass the Civil Rights Act, ensuring justice and fair play in the workplace for all Americans. This political strategy will turn into a political tragedy for America unless Congress rights that wrong.

AS THE CONGRESS FIDDLES

(Mr. FRANKS of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANKS of Connecticut. Mr. Speaker, earlier this week the House chose to do nothing to help our banks out of their financial crisis. To do nothing is still a choice, and in this case it may be a monumental decision. The banking industry of this country still suffers, and doing nothing will not make its problems go away.

In March of this year the President sent down a comprehensive reform proposal that would make the necessary changes to an outdated system.

On March 16, a headline in the Economist summed up the reaction of Congress, "Congress fiddles while the financial system burns."

Well, if Democrats were fiddling in March, they are working on a symphony here in November. Mr. Speaker, with Republicans in control, the President's proposals would have been implemented and the banking industry would be recovering right now. Instead, the American people hear the same tuneless instruments of the Democrat Congress that refuses to resolve the problems of an ailing nation.

□ 1220

Mr. Speaker, it is time for a new conductor. We need an orchestra that will work in concert with the President, not just one that plays the same old tune known as partisan rhetoric.

CARLA HILLS SAYS NO

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, it is now 2 months since I personally invited the Bush administration's top United States-Mexico negotiator, Carla Hills, to join me and other Members of Congress on a tour of the Midwest and other United States factories that have closed or down sized here in the United States and then to visit the corresponding plants that have opened in Mexico where workers earn on average $1 or less an hour and cannot even afford to buy the goods they are producing.

On this 60th day, I finally received a response from Carla Hills. The answer is, no.

No, I won't travel with you. No, I won't go to visit America's unemployed workers. No, I won't go to visit America's workers whose jobs are on the line. No, I won't go to visit Mexico's workers who are exploited every day in the name of profits only.

So I said to myself, what should I do? Well, I am going to up the ante. Now I am going to invite President Bush to travel with us here in America. I am going to send him a letter, to the

White House, and I do not want an answer from one of his aides. I want to know whether he, the President, will be willing to travel with a bipartisan delegation to meet America's workers face to face whose jobs are on the line.

REQUEST FOR INCLUSION OF LETTER IN MEMBER'S STATEMENT

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. MONTGOMERY). The gentleman will state it.

Mr. WALKER. Would it be an appropriate parliamentary inquiry to ask unanimous consent that the letter the gentlewoman just referred to be placed in the RECORD at this point?

The SPEAKER pro tempore. The Chair would inform the gentleman that that is really not a parliamentary inquiry.

Mr. WALKER. Mr. Speaker, I am asking whether or not it would be appropriate in the procedures of the House at the moment for there to be a unanimous-consent request that the letter to which the gentlewoman just referred be put in the RECORD at this point?

The SPEAKER pro tempore. That is normally the prerogative of the Member possessing the letter. Is the gentleman asking that the letter be put in the RECORD?

Mr. WALKER. Mr. Speaker, I would ask unanimous consent that the letter be included in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Mr. ALEXANDER. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

Mr. WALKER. The gentleman was not standing when he made the objection.

Mr. ALEXANDER. Mr. Speaker, I object.

Mr. WALKER. It is not timely at the present time.

The SPEAKER pro tempore. Objection is heard.

Mr. WALKER. It was not a timely objection, Mr. Speaker.

The SPEAKER pro tempore. The Chair looked at the gentleman sitting and nothing else had transpired. Then the Chair recognized that the gentleman was standing and the Chair put the question again.

MORE BROKEN PROMISES ON THE ECONOMY?

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, every time the majority leadership comes up with a proposal about the economy we get two things—more promises and more taxes. The siren song is: Just a bit more tax revenue and our problems will be solved. Well the ink wasn't even dry on last year's budget—with its largest tax increase in history—before the majority leadership was looking for ways to go back to the well. You don't have to be a certified accountant to see that when you add $163 billion in new taxes to a $200 billion plus budget deficit what you end up with are broken promises and more anxiety among our constituents. The American people are tired of broken promises—tired of a government that absolutely refuses to cut wasteful spending. They said so at the polls Tuesday. Now, look at the papers today—did you know that there is an irrefutable need to build a $71 million visitors center in the Capitol? Americans already believe virtually half of every tax dollar they pay is being wasted. Before we launch into another string of feel good, tax and spend election-year promises, destined to be broken—remember who we work for: The American people want jobs, they want health care and they want security for their families. They don't want higher taxes and they don't want more government waste. Have we got the message?

THE ODYSSEY OF THE CIVIL RIGHTS ACT AMENDMENTS

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, the odyssey began last year, 1990, when both the House and the other body adopted the Civil Rights Act Amendments. However, the President vetoed the bill and his veto was sustained.

The odyssey, Mr. Speaker, resumed earlier this year, 1991, when once again this body, the House, passed the Civil Rights Act Amendments of 1991. That spurred action on both sides of the Capitol and at the White House, which has culminated in a bipartisan compromise on Civil Rights Act amendments.

This odyssey, I hope, Mr. Speaker, will end this afternoon when this compromise bipartisan bill is adopted.

This bill will be discussed at length today. Let me just say one or two things, Mr. Speaker. First, this is not a quota bill. This is not a quota bill. This is, however, an important bill to women and minorities. It is a good bill, Mr. Speaker. It is a bill which I hope passes this afternoon resoundingly so that the odyssey which began last year ends today.

VETERANS' DAY

(Mr. LEWIS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Florida. Mr. Speaker, I rise today to commemorate the valiant individuals who are our U.S. veterans.

This year, I am proud to recognize a new and distinguished group of veteran, our service men and women who proudly served the United States in the Persian Gulf war. While memories of the gulf war and wars past become less vivid, the lasting memories of unity, sacrifice, courage, and gratitude will come alive on Veterans' Day.

To each veteran, young and old, whose commitment to our country was unwavering and steadfast, please know that the Government's pledge to you is the same. Congress has introduced and passed a number of legislative initiatives to ensure this commitment. I am proud to be a cosponsor of one particular proposal designed to make sure this pledge is met within the VA health care system.

The veteran's bill of rights guarantees that a veteran will not be denied rights, benefits, or privileges based on ethnic background, race, sex, religion, age, or geographic location.

To all of our veterans, my highest regard to you as we celebrate your day of honor on Monday, November 11. We salute you for a job well done.

WESTSIDE SCHOOL CLASS WORKS TO IMPROVE ENVIRONMENT

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, I offer my congratulations today to a classroom teacher, Mrs. Debbie Spencer, and her class at Westside School in Craighead County, AR.

Mrs. Spencer's class has undertaken the project of preservation of the environment, and in my view there are no more important issues on the national public policy agenda than those dealing with protection of the environment.

A nation can spend billions of dollars buying bombers and battleships only to allow its air to be poisoned and its water to be polluted.

Mrs. Spencer's class has undertaken to educate others about the environment and to take direct actions themselves by implementing a recycling program at her school

Mr. Speaker, all of us can do more to help solve the problem of the environment, and Mrs. Spencer and her students at Westside School are certainly doing their part and more in leading the way.

WHY I VOTED NO

(Mr. THOMAS of Wyoming asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMAS of Wyoming. Mr. Speaker, I want to talk just a moment

about yesterday's important bill, the HSS-Education appropriation. Mr. Speaker, I voted no and that was a very difficult vote. There were some very important initiatives, such as women's health issues, and I happen to be opposed to the so-called gag rule. But I voted no because the bill was financially irresponsible.

Mr. Speaker, we simply cannot continue to stand here day after day and speak eloquently about balancing the budget and vote for bills that are 12½ percent over last year.

The other irony was to blame the President for forward spending. Interestingly enough, we do not pay attention to what the President wants if we do not happen to agree, but it is very convenient to use it when he finds it that way. Voting no or vetoing this bill will not destroy these programs. It will be back in a different form.

There will be a bill. We need to set priorities. Mr. Speaker we simply cannot continue to talk about reducing the deficit and vote for bills that are $21.7 billion over the previous year.

□ 1230

TIME FOR PRESIDENT BUSH TO ADDRESS DOMESTIC ISSUES

(Ms. PELOSI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PELOSI. Mr. Speaker, last Friday statistics were released that showed that the recession, something we all know, continues and is growing deeper.

On Tuesday the people of Pennsylvania spoke out in favor of extending unemployment benefits to unemployed workers and to universal access to health care in America.

The President is in Rome, as we know. But his answer to these fears was a veto to the unemployment compensation extension. And even more insulting to the American people was earlier this week, with a straight face, Secretary Sullivan came forward with the President's health plan: a card—no extended benefits, no extended access, no extended insurance, just a card.

Mr. Speaker, I believe that the American people want more than a veto for unemployment compensation benefits, and they need more than a card when they are sick, and they need more than a jet-lagged President.

I can only chalk up this latest health care initiative to jet lag, and I hope the President will come home and address the domestic issues at hand.

CONGRESS SHOULD LIVE BY THE LAWS IT PASSES FOR EVERYONE ELSE

(Mr. GILLMOR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GILLMOR. Mr. Speaker, there is a strong perception in America today that there is only one kind of law Congress passes that it applies to itself. And those laws are called perks. But the days of Congress bragging about passing much needed legislation while quietly exempting itself from those same laws are over. The American people will not tolerate it. Before there is even further erosion of confidence in this institution, we must apply to ourselves—by the end of this session—the Civil Rights Act, the Equal Opportunity Employment Act, the Age Discrimination Act, among others.

PARLIAMENTARY INQUIRY

Mrs. SCHROEDER. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore (Mr. MONTGOMERY). For what purpose does the gentlewoman from Colorado rise?

Mrs. SCHROEDER. For a parliamentary inquiry, Mr. Speaker.

Mr. WALKER. Regular order, Mr. Speaker. Regular order.

The SPEAKER pro tempore. The gentleman from Ohio has the floor. Does the gentleman from Ohio yield for a parliamentary inquiry?

Mr. GILLMOR. I do not yield, Mr. Speaker. I have completed about half of my remarks, and I would like to complete those remarks.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. GILLMOR] has the time and he does not yield to the gentlewoman from Colorado.

The gentleman from Ohio is recognized.

Mr. GILLMOR. Mr. Speaker, if I might continue, the erosion of confidence in this institution will continue unless we apply to ourselves the Civil Rights Act, the Equal Opportunity Employment Act, and many others.

Removing these exemptions is not just a matter of fairness. It is a proposal for good government. We just might get more thoughtful, responsible legislation if Congress were affected by its own actions, whether it is workplace regulation it passes or the checks it bounces.

UNIVERSAL HEALTH CARE ACT OF 1991

(Mr. FLAKE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FLAKE. Mr. Speaker, I come today having shared with the gentleman from Illinois [Mr. RUSSO] on yesterday, his introduction of H.R. 1300, which is the Universal Health Care Act of 1991. I think it is important for Members of this House to understand the importance of this bill.

There are many Americans today who use the emergency rooms of public hospitals as their primary source of health care. So I think that all of the Members of this House ought to join together to assure that such citizens have an opportunity to have available to them appropriate health care.

In addition, there are many senior citizens who have been able to save, to have property that they will lose as they become older and frail and have an inability to be able to take care of their health care needs.

I would urge the support of all Members for these people who have put their life savings aside so that they might be able to know when they come to that point in life where their health care needs to be taken care of that indeed this country will respond to them, as they have historically responded to it through their years of work, through their years of paying taxes and through their years of service toward making America great.

WE NEED ANSWERS TO THE POW/MIA QUESTION

(Mr. CAMP asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. CAMP. Mr. Speaker, I rise today to help us resolve a painful question that has haunted our Nation for far too long: what happened to American prisoners of war and those who are listed missing in action in Southeast Asia?

I am introducing a resolution that calls on the President not to normalize diplomatic or economic relations with Vietnam until the Select Committee on POW/MIA Affairs in the other body has reported its findings.

This is a reasonable request: Let us give the committee time to finish its job before we normalize relations.

Just 2 days ago, Vietnam's Ambassador to the United Nations said his Government could resolve the question of missing Americans if the United States normalizes relations now.

Asked if that meant his Government was holding back information on missing Americans, the Ambassador declined to comment.

Another doubt was raised by that refusal to respond. Enough doubts already exist. We owe it to the men and women who served our Nation, and their families, to get the answers.

MIDDLE CLASS TAX RELIEF ACT OF 1991

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks).

Ms. DELAURO. Mr. Speaker, the middle class in this country, and in Connecticut, is in serious trouble, and today is the day we stop talking about middle class tax relief and start doing something about it.

This economic slump is a direct result of Republican economic policies.

For too long, taxes on middle class families have risen while their wages have declined. Today Democrats are sending a message to the struggling middle class. We hear you. And we are acting. Middle class Americans are fed up. They believe they've been forgotten. And they're right.

The White House has shown no leadership on job growth, health care, unemployment benefits, or on tax relief for struggling middle class families. Instead, we keep hearing the same tired old rhetoric about capital gains tax cuts for the wealthiest 1 percent of Americans.

Earlier this year, I introduced the Middle Class Tax Relief Act of 1991 which, like the Rostenkowski plan introduced today, would provide tax cuts to all middle-income taxpayers and would be revenue neutral.

Mr. Speaker, Democrats are offering leadership. Today, we're offering a plan to help the middle class. I congratulate Chairman ROSTENKOWSKI for putting his proposal on the table. It's the Democrats who are offering concrete ideas to help the middle class and to spur economic growth.

AWARDING PRESIDENTIAL UNIT CITATION TO CREW OF U.S.S. "NEVADA"

(Mrs. VUCANOVICH asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. VUCANOVICH. Mr. Speaker, today I am introducing a resolution that calls on the President to award the Presidential Unit Citation to the crew of the U.S.S. *Nevada* in recognition of their heroism and gallantry during the attack on Pearl Harbor on December 7, 1941. My colleague, JIM BILBRAY, is joining me in introducing this resolution.

Mr. Speaker, the U.S.S. *Nevada* was the oldest battleship present, but was the only one able to get under way. Over 50 men were killed and over 100 wounded on the ship during the attack.

Although many Congressional Medals of Honor and Navy Crosses were awarded, the entire crew has had no official recognition. In fact, the role of the crew has been either downplayed or overlooked. I believe that it is appropriate for the President to award them the Presidential Unit Citation. The crew performed so courageously and gallantly that I believe they are deserving of this special recognition.

I urge my colleagues to join me in recognizing the crew and to cosponsor this resolution.

BASKETBALL CENTENNIAL DAY

(Mr. NEAL of Massachusetts asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NEAL of Massachusetts. Mr. Speaker, 100 years ago, my hometown of Springfield, MA, was in the midst of a time of invention. The Duryea brothers were developing the first gas powered automobile and Dr. James Naismith invented the game of basketball. And while the automobile went on to fame with Henry Ford in Michigan—basketball—the only major sport found in America—has always been identified with Springfield, MA.

So it is with great pride that I introduce this House joint resolution to proclaim December 21, 1991, as Basketball Centennial Day.

Mr. Speaker, a century ago, Dr. Naismith sought to help the athletic-minded students of the School for Christian Workers—now Springfield College—to bridge the gap between fall football and spring baseball. His answer was the creation of a game which involved two teams of players attempting to toss a ball into peach baskets.

Who would have thought that this competition first played in Dr. Naismith's gym class would later evolve into the game that made famous the names of Mikan, Baylor, Cousy, Russell, Byrd, and Jordan. But whatever the level people play, basketball is a game that teaches the ideas of dedication, commitment, and teamwork.

So in conclusion, I urge you to support this tribute to America's game and ask that you cosponsor this resolution before the final buzzer.

CAMPAIGN FINANCE REFORM NEEDED

(Mr. FISH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, on Tuesday, voters in Washington State narrowly defeated a referendum limiting years of service in Congress to 6 years. Next year, similar proposals will be on the ballots in 10 other States. Voters are fed up—fed up with check bouncing, unpaid restaurant bills, and congressional perks—and they are on the verge of taking one step forward and two steps back in an attempt to change things.

Term limits are not the answer—campaign finance reform is. We must level the playing field for qualified challengers by acting to reform franking privileges, encourage compliance with overall spending limits, reduce the influence of PAC's, and decrease broadcast rates to make it easier for challengers to get their message out.

As incumbents, we feel threatened by potential changes to the system which has brought us to, and kept us in, Congress. However, our constituents are demanding reform and it is our responsibility to act. We must restore the faith of the American public in our system of government before their right to choose is permanently restricted.

ESTABLISHMENT OF THE ANNUAL WILLIAM O. LEE, JR. AWARD FOR VOLUNTARISM AND COMMUNITY SERVICE

(Mrs. BYRON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BYRON. Mr. Speaker, today I take great pleasure in announcing that a nonprofit organization in Frederick, MD, Community Living, has established the annual William O. Lee, Jr. Award. This organization, Community Living Inc., is well known in Frederick, MD, for its care of disabled citizens. The annual award will be presented to a citizen of Frederick County who has demonstrated caring, fairness, and giving to the people of Frederick through voluntarism and community service.

I can understand why Community Living chose to establish this annual award in honor of Bill Lee, who exemplifies the best qualities of a public servant and continues to contribute to his community as a volunteer following his retirement from teaching. Bill graduated from Howard University and received his masters from Western Maryland College. He then spent 29 years as an educator, including 13 years as principal of West Frederick Middle School. After his retirement, he became an alderman and was so well known and liked in the community that he received the largest number of votes in Frederick during his reelection in 1989.

Bill is considered by all of us who are lucky enough to know him as one who is always willing to give of himself to help the community and the citizens of Frederick County. For example, in addition to his duties as alderman, Bill volunteers on the boards of many local churches, hospitals, and community organizations, including Frederick Memorial Hospital, the American Red Cross, hospice and community living just to name a few.

The establishment of this award is a tribute to Bill Lee in recognition for his long service of voluntarism and community service work in the Frederick community. I believe future recipients will be truly honored to receive this award in recognition of the work and caring that is so representative of Bill Lee.

SUPPORT THE FAMILY AND MEDICAL LEAVE ACT

(Mrs. ROUKEMA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker, I am very proud of the message that New Jersey's voters sent to Trenton and Washington on Tuesday. I am equally proud of the method in which the New Jersey Republican Party presented the issues.

The New Jersey Republican Party said the Democratic taxes were unacceptable and that the Republican Party cares about you and your families. Take but one example: The Family and Medical Leave Act. In our platform adopted this September, the New Jersey Republicans committed the now strongly Republican legislature to extending the New Jersey State family leave law to include family and medical leave coverage.

Mr. Speaker, New Jersey Republicans are leading the way for the Nation in saying that today's changing work force needs the protections of family and medical leave. In these tough economic times hard working, tax-paying American families need two paychecks just to get by, pay the mortgage, and educate the kids. When a family medical emergency strikes, the very least the Congress can say is, "Your job is safe." A no vote on family and medical leave is to say to these families, "Go find another job."

The House should pass and the President should sign the Family and Medical Leave Act.

COLLEGE RELIEF FOR MIDDLE-INCOME AMERICANS

(Mrs. LOWEY of New York asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LOWEY of New York. Mr. Speaker, middle-income Americans need tax relief, but they also need college relief.

College costs are rising by leaps and bounds and middle-income families are seeing their dream of a college education just slip away.

How do these families spell relief? They spell it H.R. 3553, the higher education reauthorization.

This landmark bill is a godsend to Americans who are frantic with worry over college bills. H.R. 3553 massively expands grant and loan aid for middle-income Americans, and under this bill, every American family will be eligible for some form of Federal aid, and aid amounts will be substantially increased.

At the same time our economy will grow as we produce highly skilled workers ready to compete in the world marketplace.

Tuesday's election results are a clear indication that the taxpayers are asking, "What is the Government doing for me?" So do the taxpayers a favor in your district, do the economy a favor, cosponsor H.R. 3553, the bill that puts money in our families' pockets and growth in our economy's future.

SUPPORT THE VETERANS' BILL OF RIGHTS

(Mr. JAMES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JAMES. Mr. Speaker, as we prepare to return to our districts to honor the service of our Nation's veterans, I rise to support the veterans bill of rights offered by my friend, Mr. STEARNS from Florida.

Mr. Speaker, the veterans of our armed services have been sent around the globe to defend the principles of freedom and democracy for America. We needed their help in moments of crisis, and they responded by serving this Nation with honor and dignity.

I represent a district which has more veterans that need and deserve medical treatment than the system currently serves.

Mr. Speaker, Florida veterans are not receiving adequate treatment. Our veterans deserve equal access, care, and treatment wherever they live.

Mr. Speaker, our veterans fought to protect and preserve the rights of all Americans—it is time for the Congress to protect and preserve the rights of our veterans. Please support the veterans bill of rights.

SETTING THE RECORD STRAIGHT

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I had come to this floor planning to speak on the fact that today in Europe the European Community gave their families 14 weeks of paid leave, and I hope that while the President is there he checks in on that, because here we are begging to get him to sign family medical leave which is unpaid.

But as I sat here, I listened to Members one more time come to this floor talking about things that are untrue. If you look at rule LI, this House is under many of the civil rights, sexual harassment, the disability rights, and every other bill. We put ourselves under it even though we would qualify for the small-business exemption.

I am sorry there is not a way to point out when Members come here and say things bashing this institution that are untrue, but I ask them in the future to, please, read rule LI. If they do not think it is strong enough, fine, but do not say we are exempt, because we are not.

Second, those who come here and say that we are not under Social Security, I wish they would, please, read their paycheck. On my paycheck they are taking out Social Security. I understand they are supposed to be taking it out for everyone else. If they are not, I want to know what is going on.

□ 1250

SUPPORT FREE ENTERPRISE—OPPOSE THE RUSSIAN GIVEAWAY

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, I hope we will all share and join in opposing the proposal to distribute a billion dollars of United States defense funds to Russia. This is a faulted proposal for the following reasons:

First, Americans do not want this proposal in the face of economic hurting here at home.

Second, a billion dollars will not save the Russians. The amount needed to bail out the Russians would dwarf the Marshall Plan.

Third, Russia abounds in natural resources, such as oil and strategic materials which our country greatly needs. The Russians should learn about free enterprise firsthand. They should sell us their resources that are needed, which we greatly need, and get hard currency from us which they greatly need.

Mr. Speaker, this is a good place for free enterprise, not more spending, but free enterprise to begin. Please join in opposing this giveaway.

THE LESSON OF THE ELECTIONS

(Mr. ROHRABACHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROHRABACHER. Mr. Speaker, there has been a lot of talk in the last few days about the election results and what the meaning of those elections were. Well, I think the elections that took place on Tuesday put this body and put Washington, DC, on notice. In New Jersey we saw the opening shots of a tax revolt that I believe is going to sweep this country. It is America's second great tax revolt, the first having been in 1978. That might have been the second one. The first one might have been back in 1776, come to think of it.

The Republican defeat in Pennsylvania as compared to the Republican victory in New Jersey can be traced to the fact that our candidate in Pennsylvania was tied to the President of the United States, who changed his position on taxes a year ago. One year ago the Democrats in this body forced the President of the United States to renege on his promise to the American people and accept the higher taxes that the Democrats pushed and pushed until the President had to relent and accept the Democratic higher taxes. That tax increase one year ago destroyed our economy.

The next issue in the next election is going to be jobs and taxes, and the Democrats are going to lose on those issues.

WARMED OVER QUOTA BILL WILL MAKE RECESSION WORSE

(Mr. HERGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HERGER. Mr. Speaker, each of us should be actively opposing and fighting against discrimination wherever it exists. That is why I am opposing the compromise civil rights bill, which remains a quota bill.

Mr. Speaker, this Nation is in a recession and the last thing we need to be doing is exposing our small businesses to more lawsuits. By creating a financial bonanza for lawyers and declaring small businesses guilty until proven innocent, the civil rights bill will deepen the recession while forcing businesses to hire by the number.

Mr. Speaker, we need a jobs bill, but the only jobs the civil rights bill creates are for lawyers. Let us say no to discriminatory quotas and vote down the so-called compromise.

WHERE IS THE VISION FOR AMERICA?

(Mr. HEFNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HEFNER. Mr. Speaker, 2 or 3 days ago my colleague, the gentleman from North Carolina, stood here in this well and said that Members of Congress did not come under the Social Security Act. That was much of a surprise to me, so I immediately rushed back to my office and checked my pay stub to find out if they had been taking out Social Security. He should check his, too, because if they have not been taking out Social Security, somebody is in deep trouble.

And for putting ourselves under the laws that govern small-business people, I have always voted for exemption for small business, and most of these bills that have been passed exempt small business with 25 to 50 employees.

By my last account, I have about 18 employees, and I would not fit into that category anyway, but we are already under these laws that apply to all Americans.

As far as a vision for America that the Republicans keep saying that had they been in charge for all these years, but the last 11 years the Republican vision for America, their budget that they put forward every year at the start of the year, out of the last 12 years, three votes have been taken on the Republican budget, their vision for America. Do you know how many votes they got? One year Jack Kemp voted for the budget. One year 27 people voted for the budget, and 80 is the most votes they have ever had for the Republican vision for America.

It speaks for itself, Mr. Speaker.

PRESIDENTIAL TRAVELS AND DOMESTIC AGENDA

(Mr. SENSENBRENNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, I represent Rome, WI, which has about 130 people living there. The residents of Rome, WI, and I believe all Americans want the President of the United States to be the leader of the free world. Americans recognize that in order to maintain that leadership role in the free world, the President of the United States has to periodically meet with the heads of other nations, particularly those that are allied with us. That is why the President is in Rome, Italy, this week.

Hopefully, the negotiations and discussions in Rome, Italy, will bring about a ratcheting down of the American troop strength in Europe, and thus reducing our defense budget and freeing up money to reduce the Federal budget deficit to provide a job creating tax cut as well as to provide money for health care and other social needs.

So before trashing the President going and meeting with our NATO partners, let us look at the good that those kinds of meetings can do. Because NATO is at a crossroads, because of the collapse of the Warsaw Pact, now is the time for George Bush to seize the moment so that we can end up spending less on defense and more on ourselves.

SERIOUS QUESTIONS ABOUT AID TO THE SOVIET UNION

(Mr. ROEMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROEMER. Mr. Speaker, it is with deep reflection that I rise today to address my colleagues and express my serious reservations about sending $2 billion from the Department of Defense and the Department of Agriculture to the Soviet Union.

I have drafted a letter that I will urge my colleagues to sign on to the White House to express these concerns in three ways:

First, Mr. Speaker, priorities. When we cannot come up with money for our hard-working people for unemployment benefits extension, that is a serious problem there at home.

Second, timing, Mr. Speaker. The peace dividend for our first dollars to go abroad not to be used in agriculture for our farmers or education of our children is a serious sign and the wrong signal to send to our constituents.

Third, Mr. Speaker, debate. Why can we not debate such a serious proposal and include the American people in this debate?

Mr. Speaker, let me close by saying, we have fought the Soviets in a cold war for 40 years. Let us not commit to feed them for the next 40 years until we discuss ways to foster free markets, democracy, and peace.

□ 1300

LEGISLATING BY SEQUEL

(Mr. EWING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EWING. Mr. Speaker, in Hollywood, the more sequels, the worse the movie.

By the time "Rocky, Part Fifteen" comes to theaters around the world, it will bear scant resemblance to the Oscar-winning original.

But in Washington, sequels sometimes actually improve the original. The unemployment compensation bill part IV may actually give relief to the unemployed without busting the budget. It has come a long way from the disaster epic that the Democrats originally proposed.

Unfortunately for the unemployed, this sequel was a long time in coming.

Instead of crafting a quality original that the President could sign, the Democrats tried to score political points and then worked to compromise.

I call this legislating by sequel.

If Republicans were in control, legislating by sequel would be a thing of the past. Republicans would get it right the first time.

Mr. Speaker, let us leave the sequels to Hollywood. The unemployed cannot afford these silly political farces anymore.

AMERICA HURTS WHILE THE PRESIDENT "ROMES"

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Speaker, yesterday we said on the floor that while Rome burns, Democratic leadership fiddles. That is 180 percent wrong. What is true is that while the President "Romes", parts of America are burning; jobs are going up in smoke, business is folding, and health policies are being cancelled.

The President now says he got the message from Pennsylvania: The middle class is hurting. What is amazing is that it took Pennsylvania for the President to understand that middle-income America indeed is hurting.

SUPPORT EXPRESSED FOR REPEAL OF LUXURY TAX

(Mr. MACHTLEY asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. MACHTLEY. Mr. Speaker, I rise again today to express my continued

concern over the so-called luxury tax on boats which was part of last year's deficit-reduction agreement. It was a bad idea last year, and it remains a bad idea today.

Those of us from States that have been adversely affected, who were once proud marine manufacturers, know that this tax was needless, ill-conceived, and counterproductive. I constantly hear from my colleagues in the Democratic Party, statements about the lack of an agenda on the domestic front and joblessness in America. Yet if they would act on this, they could put some 19,000 employees back to work—1,400 in my own State.

The bill of the gentleman from Florida [Mr. SHAW] would repeal the luxury tax, and it deserves immediate attention. If the chairman of the Committee on Ways and Means would use his influence and power to bring this bill to the floor, I am convinced it would work. Extension of unemployment benefits is a very bad remedy for people that this Congress has put out of work.

UNIFORM BUSINESS TAX WOULD REPLACE ANTIQUATED CORPORATE TAX POLICY

(Mr. SCHULZE asked and was given permission to address the House for 1 minute and revise and extend his remarks.)

Mr. SCHULZE. Mr. Speaker, over the last few years, I have discussed publicly the need to modernize our tax policy. Our corporate tax system is antiquated, inefficient, and anticompetitive. In fact, the corporate tax is a major reason America is mired in a recession.

I have proposed, for tax policy reasons, a 9-percent uniform business tax to replace the corporate tax. The UBT, as I call it, would address fundamental flaws in our tax policy while providing substantial economic stimulus.

Under the UBT, all capital spending on equipment and machinery would be expensed. Imports would be taxed, all exports would be exempt from tax, and, substantial revenue could be realized to pay for Social Security tax cuts, stimulus to a depressed real estate industry, a cut in taxes on lower- and middle-income Americans, and capital gains.

In short, Mr. Speaker, the revenues from the GATT legal import adjustment under the uniform business tax could be utilized to cut taxes, simplify our Tax Code and put millions of Americans back to work.

CELEBRATE VETERANS DAY BY COSPONSORING THE VETERANS BILL OF RIGHTS

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, this weekend America will celebrate its 72d Veterans Day. This is a day we set aside each year to thank those who sacrificed so much to defend our freedoms.

The veteran has carried a burden for all of us. In return, we have an obligation to express appreciation for this priceless gift. The veteran agreed to give up freedoms and opportunities open to those who did not serve. In many cases the veteran sacrificed health and vigor to preserve and perfect our freedoms.

With Veterans Day just 3 days away, I urge my colleagues to cosponsor legislation to ensure that veterans receive the benefits they deserve. I urge all my colleagues to cosponsor the veterans bill of rights, H.R. 3311.

This bill is straightforward: It states that a qualified veteran should not be denied any VA rights, benefits, or privileges on the basis of race, sex, religion, age, or geographic location.

The veterans bill of rights will work toward ending all kinds of discrimination against veterans. These men and women gave so much to our country. We owe them the veterans bill of rights.

BEAR POPULATION IN UNITED STATES THREATENED BY ASIAN DEALERS IN ILLEGAL ANIMAL BODY PARTS

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, New York City has just scored another first—the first gangland style execution of an individual who trafficked in illegal animal body parts. Found dead earlier in the week, Mr. Haeng Gu Lee, a Korean-American, purportedly was a major dealer in animal body parts. I have followed this issue for several years and can assure you that this type of activity is far more common than people realize.

The North American black bear population is being mercilously reduced through the unsavory efforts of poachers and Asian middlemen who have trapped into a very lucrative Asian market for body parts. Once a bear is killed in the forest, its gallbladder and paws are removed. These parts then are sold on the international market; invariably ending up on Japanese, South Korean, and Taiwanese shelves, where they are prized for certain medicinal and culinary properties. An individual bear gallbladder routinely will bring up to $50,000 in Asia, while the going rate for a bowl of bear paw soup in Taiwan now is estimated at about $1,400.

Mr. Speaker, our native black bear population systematically is being wiped out, so that someone halfway around the world can enjoy bear paw soup for lunch. Unless we help the Fish and Wildlife Service and other Government agencies crack down on this outrageous activity, we will be visiting the last of our black bears in zoos.

NEW DISCLOSURES ON BUDGET FIGURES

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute.)

Mr. DORNAN of California. Mr. Speaker, 47 years ago today Franklin Delano Roosevelt, who had already served his country for 12 years, was elected to an unprecedented fourth term. Now, if President Roosevelt were to bring back from Heaven his entire team and ask them to take a look at the budget of the United States today, none of them would qualify to serve their country. They would need a course in advanced mathematics. Here is why:

The budget in 1941, with total outlays, was $13.4 billion. This year's budget is $1,350,891,000,000. That is over a trillion dollars, and 50 years ago yesterday—they were working out the details today—President Roosevelt decided to ask for $1 billion—and imagine, our budget was $13 billion—to send to the Soviet Union for lend-lease to help them hold off the German hordes which were to encircle Leningrad 2 days from now 50 years ago. That was a billion dollars.

Mr. Speaker, what is LES ASPIN, our great chairman of the Committee on Armed Services, asking for out of his authority? Anyway, it should be Foreign Affairs. He is asking for a billion dollars to spread around the Soviet Union when they are in utter chaos and bankruptcy. That $1 billion will not even be noticed. We should teach them how to fish, not to give them fish for 1 day.

OUTRAGE IN YUGOSLAVIA

(Mr. RIGGS asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. RIGGS. Mr. Speaker, my colleague, the gentleman from California [Mr. DORNAN] is always a hard act to follow.

Mr. Speaker, the last of the hardline, oppressive Communist regimes continues to run unchecked in Eastern Europe, murdering innocent men, women, and children in its wake.

□ 1310

The Republics of Croatia and Slovenia, once free and independent states, forced together against their will by Stalin, continue to seek recognition of independence. Without the full weight of our Nation behind them, the Communist forces of the Yugoslav Army will continue their bloody attacks on villages and towns.

The highly vaunted European Community has proven themselves impotent to deal with one of their first real tests of strength and character. Their negotiating efforts proceed at a snail's pace, while people die.

All hopes for peace have long since disappeared, as all cease-fire agreements have been casually observed, then violently ignored.

Mr. Speaker, the United States of America can no longer bear idle witness to the death and destruction that has left more than 1,000 people dead and an estimated 200,000 homeless in 5 months. For us to sit on the sidelines and do nothing, while this murderous regime visits it death wish on those whose only crime is that they wish to be free, is totally unbecoming of a Nation of our proud heritage.

Mr. Speaker, I urge Members to rally behind this right of self-determination and support House Concurrent Resolution 224 introduced by the gentleman from California [Mr. GALLEGLY] and recognize the independence of the Republics of Croatia and Slovenia, and urge the White House and the President to get behind any peace plans with real teeth in them.

TRIBUTE TO HON. JOHN T. MYERS OF INDIANA

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, tomorrow, November 8, marks an important milestone in the political history of my State of Indiana and this House. November 8, 1966, 25 years ago, our friend and colleague from Indiana, JOHN MYERS, was first elected to Congress.

I know of no Member who is personally liked and respected on both sides of the aisle more than JOHN MYERS. I am proud to have him as the dean of the Indiana Republican delegation in this House, even if our delegation is just the two of us.

There is an adage that you should be able to disagree without being disagreeable. That saying fits JOHN MYERS like a glove. Even our colleagues who may be politically and philosophically opposite of JOHN MYERS, like JOHN MYERS.

I know that even on those rare instances when we part company on an issue, JOHN always lives up to the title, "the gentleman" from Indiana.

I want to congratulate JOHN and Carol on this achievement and wish them many more years of success.

I would also note for the record, Mr. Speaker, that the class elected to Congress on November 8, 1966, included a freshman Republican Congressman from Texas named George Bush.

Congratulations to you, too, Mr. President.

Mr. DORNAN of California. Mr. Speaker, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from California.

Mr. DORNAN of California. Mr. Speaker, might I inquire of the gentleman from Indiana [Mr. BURTON] where in the great State of Indiana the river called Tippecanoe is located?

Mr. BURTON of Indiana. It is up near Lafayette.

Mr. DORNAN of California. Is it in the district of the gentleman from Indiana [Mr. MYERS]?

Mr. BURTON of Indiana. It is.

Mr. DORNAN of California. Mr. Speaker, in 1811 that battle was fought on this very day, November 7. Is the gentleman telling this House Tippecanoe and MYERS, too?

Mr. BURTON of Indiana. That is right.

Mr. DORNAN of California. I love it.

VANDALISM IN CROATIA

(Mr. KASICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KASICH. Mr. Speaker, the terrible war in Yugoslavia drags on while the world watches. The causes of the war are admittedly complex, and no side is without fault, but the results are easy enough to understand: The Communist-dominated Serbian Government has conducted a shameful war against civilians in Croatia. Thousands of lives have been lost. The economic damage has been calculated in the billions. Perhaps most shamefully of all, the Serbian Army has conducted a campaign of deliberate vandalism against Croatia's cultural heritage. They are destroying a part of Europe's cultural treasure as we speak.

It is time to stop wringing our hands. So far, we have not even gotten Serbian dictator Milosevic's attention. Our Government should recognize Croatia and the other republics that want to be free of Milosevic's Communist rule. We should place comprehensive sanctions against Serbia, including an oil embargo. We should also consider freezing the assets of the Yugoslav Federal State and distributing the proceeds to the successor republics—except for Serbia—on a pro rata share. Mr. Speaker, perhaps that will get Mr. Milosevic's attention.

CONGRATULATIONS TO DALLAS' NEW MAYOR, STEVE BARTLETT

(Mr. BARTON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Speaker, I rise today to inform Members that a former colleague, Steve Bartlett, the former Representative of the Third District of Texas, was elected mayor of Dallas 2 days ago. Steve Bartlett won an impressive victory, getting twice as many votes as the next candidate. He put together an impressive coalition of minorities and grassroots citizens in the city of Dallas. He won without a runoff. He won in an election that had been delayed for over 6 months because of problems with city redistricting.

Steve, we are going to miss you in Washington, but we wish you the best of luck in Dallas and look forward to seeing you when you come up here to represent the citizens of Dallas.

CONGRESS OUGHT NOT BE PRIVILEGED POTENTATES

(Mr. WALKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALKER. Mr. Speaker, a number of my Republican colleagues have come to the floor over the last several days and indicated that if Republicans controlled the Congress, that we would force Congress to live under the same rules and laws that other Americans live under.

Some of my colleagues from the Democratic side have taken great umbrage at that, with the very idea that somebody would raise the question of Congress not living under the laws that it makes for others.

The Democrats who have controlled the Congress for 40 years believe themselves to be privileged potentates who ought not have to obey the laws of other people. So they have come to the floor defending that.

The gentleman from North Carolina earlier today said, "We live under the Social Security law," and he is right. We do. It took us 50 years to get there. After 50 years Congress finally decided it ought to participate under Social Security.

The gentlewoman from Colorado told us that we have our own Civil Rights Act. It is under rule LI. Of course, that is different from the civil rights law. What we are suggesting is maybe we ought to live under the civil rights law that other Americans have to obey, not just our own.

What about unemployment compensation, and what about the whole business of the Fair Labor Standards Act? You know, the minimum wage?

We are under that law, too, except we exempted all of our employees. We took it to the House Administration Committee where they figured out this way of exempting all our employees, despite the fact we are under the law.

That is the kind of thing that we find all the time in the Congress: Where Congress is covered by the law, it finds a way to wiggle out.

We ought not be privileged potentates. The Congress ought to obey the laws that everybody else does. A Republican Congress would do so.

CIVIL RIGHTS ACT OF 1991

Mr. WHEAT. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 270 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 270

Resolved, That upon adoption of this resolution it shall be in order to consider in the House the bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes. Debate on the bill shall continue not to exceed one hour, with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor. The previous question shall be considered as ordered on the bill to final passage without intervening motion except one motion to commit, which may not contain instruction.

The SPEAKER pro tempore (Mr. MONTGOMERY). The gentleman from Missouri [Mr. WHEAT] is recognized for 1 hour.

Mr. WHEAT. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. DREIER], and pending that, I yield myself such time as I may consume.

Mr. Speaker, all time yielded will be for the purpose of debate only.

Mr. Speaker, House Resolution 270 makes it in order to consider in the House the Senate bill 1745, to amend the Civil Rights Act of 1964 and to restore and strengthen civil rights laws that ban discrimination in employment. The rule provides for 1 hour of general debate, 30 minutes to be equally divided between the chairman and ranking minority member of the Committee on the Judiciary, and 30 minutes to be equally divided between the chairman and ranking minority member of the Committee on Education and Labor.

In addition, the resolution provides one motion to commit the Senate bill which may not contain instructions.

Mr. Speaker, this is an extraordinary situation and thus we have an extraordinary rule. As my colleagues are all aware, the substance of this civil rights legislation has been the subject of countless committee meetings, days of floor debate and hours of intense negotiation for almost 2 years.

During this time the sponsors of various bills, committee chairmen and ranking members and many others have gone far beyond the extra mile to arrive at a package that can be agreed to by both Chambers of Congress and by the President. The bill before us today is not a perfect bill, it is a compromise, with all that a compromise entails.

This particular compromise was largely constructed in the other body in conjunction with the administration. Many of the Members on this floor see certain deficiencies in S. 1745 needing amendment. However, the Committee on Rules was given the most firm assurance yesterday that the other Chamber is absolutely committed to the bill as written and that any changes would jeopardize the compromise.

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in reluctant opposition to this rule because I support the compromise Civil Rights Act embodied in S. 1745. But I also believe the legislation can be improved without jeopardizing this delicately crafted agreement between the President and the overwhelming majority of our colleagues in the other body.

President Bush is to be commended for holding firm on his pledge to seek a strong civil rights law that bans discrimination in employment without forcing employers to resort to quotas to avoid unreasonable litigation.

□ 1320

I believe S. 1745 can accomplish this objective. Unfortunately, the Committee on Rules rejected our attempts to make in order amendments by the gentleman from Illinois [Mr. HYDE] and the gentleman from California [Mr. RIGGS] that would extend to employees of the House of Representatives the same rights and rules applicable to those in the private sector.

Our friends in the other body took the courageous step of applying this bill and other major antidiscrimination laws to their employees. Although the House has instituted procedures to allow an individual to file a complaint, it does not allow or judicial review, a right provided to employees of the private sector and the executive branch.

In addition, Mr. Speaker, the Committee on Rules also rejected our efforts to make in order a number of clarifying amendments offered by the distinguished gentleman from New York [Mr. SOLOMON], our very distinguished ranking Republican Member. His amendment seeks to clarify that the exemption already applying to Senate employee hiring decisions based on political compatibility and affiliation would likewise apply to the hiring decisions of elected State and local officials.

The language in S. 1745 can be interpreted to mean that State and local elected officials may not consider the political affiliation of prospective employees. Finally, Mr. Speaker, the rule does not permit the traditional right of the minority to offer a motion to recommit with instructions.

I recognize that the gentleman from Massachusetts, Chairman MOAKLEY, is concerned that the circumstances surrounding this legislation are unusual. I hope we can get some assurance that this will not become a pattern of abuse.

Mr. Speaker, the amendments proposed by my colleagues on this side of the aisle would undoubtedly be approved by the other body and sent to the President for his signature. They are an attempt to address a double standard that exists between the Government and the private sector. By not allowing the amendments to be considered, we are continuing an arrogant stance that has undermined public confidence in Congress as an institution.

As the President so eloquently stated, "The American people want Congress to comply with the same laws that are imposed on everyone else."

Mr. Speaker, unfortunately, the rule does not allow us to address this issue. For this reason, I cannot support the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. WHEAT. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Washington [Mr. MCDERMOTT].

Mr. MCDERMOTT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in opposition to the resolution. I do so because this is a closed rule. It prohibits us from offering an amendment the bill desperately needs, to fulfill its promise of restoring the meaning of our civil rights laws.

This bill is filled with fine and noble words about protecting workers against unlawful discrimination, about expanding the scope of the civil rights laws. It is supposed to overturn five Supreme Court cases, including the notorious decision in Wards Cove Packing Co. versus Atonio. We are all supposed to be proud of what we have done here, to congratulate ourselves.

But I cannot join the party just now. Someone has brought a skunk into the garden. You can find it in section 402(b) of this bill, way back on page 77, where it says:

> Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

Those are not noble words. Those are the words that exempt one case, Wards Cove Packing Co. versus Atonio, from everything in this bill. Those are the words that condemn 2,000 Alaska cannery workers to what one Supreme Court Justice called a plantation economy.

They are the plaintiffs in this case, and many of them are my constituents. For them, and for them alone, this bill means that Wards Cove versus Atonio will forever be the law of the land. For them, this bill is a lie.

Twenty-five of us wanted to offer an amendment to remove this special-interest provision that protects a violator of civil rights and punishes the victims. But this closed rule forecloses that amendment. This rule closes the courthouse door to a group of Asian-Americans and Alaska Natives who have worked hard and sought justice for 17 years and who deserve better from the Congress of the United States.

They also deserve better from the administration. Last night, while Frank Atonio watched, the Rules Committee was forced to adopt a closed rule, because the White House said the bill will be vetoed if this Wards Cove exemption is removed.

I know that the committee had no choice, when faced directly with a veto threat. I especially thank the gentleman from Missouri [Mr. WHEAT], who stood up for the cannery workers against that threat.

Frank Atonio wrote a letter to Senator ADAMS, and I will include that letter and other material in the RECORD. Mr. Atonio said:

I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage.

I do not know what to tell Mr. Atonio. But now I know whom to ask. If the President truly would reverse himself on this bill and veto it, just because we remove the exemption for one company, then the President ought to have the courage to say so in public. He ought to explain why this bill requires the betrayal of these workers.

Perhaps the President will explain these things when he returns to the United States.

So let us now praise the Civil Rights Act of 1991, which the President will sign after doing everything he could for 2 years to stop it. And let us, by all means, acknowledge the hard work, the vision, and the determination of our chairmen and others in both Houses, from both parties, who have made it possible.

But as we congratulate each other, and go home to tell our constituents what we have done for civil rights, let us remember my constituent, Frank Atonio, and the 2,000 cannery workers whose quest for justice will be sacrificed on George Bush's altar of racial politics.

I am going to vote for this bill because it will do great good for millions of people. But it abandons and betrays 2,000 people who had the courage to stand up and fight discrimination when they were faced with it. We should not abandon them. We should protect and support them, and that is why I am voting against this rule.

HOUSE OF REPRESENTATIVES,
Washington, DC, November 4, 1991.

Hon. Joseph Moakley,
Chairman, Committee on Rules, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In the near future, the House is expected to take up S. 1745, the Senate version of the Civil Rights Act of 1991. Like you, we have worked for the enactment of this historic legislation. But we are appalled at the provision of the Senate bill which exempts a single employer, Wards Cove Packing Co., from its protections.

This exemption is a cynical betrayal of some 2,000 Asian-Americans, Alaska Natives, and other minority workers who have been employed in Wards Cove's Alaska canneries over the past 17 years. They brought the legal challenge to plantation-like conditions which made this bill necessary. We owe it to them to restore the meaning of the 1964 Civil Rights Act, as we seek to do in this bill for every other American worker.

Many supporters of the Civil Rights Act of 1991 are concerned that changes in the language negotiated between Senators and the White House might trigger a veto of the bill. To the best of our knowledge, the exemption of the *Wards Cove* case was an accommodation among Senators, not a condition for White House approval. Therefore, removing this section should not result in a veto.

We hope your Committee will give the House an opportunity to prevent a travesty of justice, by amending the bill to apply its provisions to the one employer in this country which has won an exemption in the Senate.

Sincerely,

Jim McDermott, Robert T. Matsui, Pat Schroeder, Les AuCoin, Patsy T. Mink, Jolene Unsoeld, Howard L. Berman, Chet Atkins, Nancy Pelosi, Pete Stark, Jim Traficant, Norman Y. Mineta, Gerry Studds, Bernard Sanders, Major R. Owens, Esteban Torres, Craig Washington, Neil Abercrombie, Mel Levine, Al Swift, Ronald J. Dellums, George Miller, Jose Serrano, Jim Jontz, Edward R. Roybal, Eni F.H. Faleomavaega.

OCTOBER 28, 1991.

Re, Danforth-Kennedy Civil Rights Act of 1991.

Senator BROCK ADAMS,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR ADAMS: I am the Frank Atonio of *Wards Cove Packing Co.* v. *Atonio.*

I am writing out of a deep concern about a section in the Civil Rights Act of 1991 which excludes our case from coverage.

It says the Act shall not apply "to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

I am told no other case in the country besides ours meets these criteria, so no other case in the country is excluded from coverage.

I am told this provision was added at the insistence of Senators Murkowski and Stevens, the two senators from Alaska where Wards Cove Packing Company has its operations. I am also told Wards Cove Packing Company has done a great deal of lobbying in Washington, D.C. to get this provision.

Like other non-whites at Wards Cove Company, I worked in racially segregated jobs, was housed in racially segregated bunkhouses and was fed in racially segregated messhalls. A number of us brought the case to redress the injury caused by racial discrimination. But we now see the original injury compounded by a new injury—one caused by a special exemption obviously designed to make it hard for us redress the racial discrimination.

The Civil Rights Act of 1991 was drafted in part to overrule the Supreme Court decision in our case. It says:

"The Congress finds that—

* * * * *

"(2) the decision of the Supreme Court in Wards Cove Packing Company v. Atonio, 490 U.S. 624 (1989) has weakened the scope and effectiveness of Federal civil rights protections. . . .

* * * * *

"The purposes of this Act are—

* * * * *

"(2) to codify the concepts of 'business necessity' and 'job relatedness' enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and the other Supreme Court decisions prior to Wards Cove Packing Company v. Atonio, 490 U.S. 642 (1989)."

I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage. I would appreciate your asking the sponsors (both Republican and Democrat) how they can justify this special exemption.

We have been fighting our case for seventeen and one half years. It was nearing a conclusion when the Supreme Court decided to use it to overturn well established law. We now see new roadblocks raised, which place a just resolution farther in the future.

Few workers in the country are as economically disadvantaged as non-white migrant, seasonal workers, a group which comprises the class in our case. Yet the special exemption in the bill will now make it harder for us than anyone else to prove discrimination against our former employer.

I would appreciate your doing everything in your power to fight this provision.

Yours truly,

FRANK (PETERS) ATONIO.

NORTHWEST LABOR AND
EMPLOYMENT LAW OFFICE,
Seattle, WA, October 28, 1991.

Re Danforth-Kennedy Civil Rights Act of 1991

Senator BROCK ADAMS,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR ADAMS: I am an attorney for the plaintiffs in *Wards Cove Packing Co.* v. *Atonio.*

I am writing about section 22(b) of the pending Civil Rights Act of 1991, which reads:

"Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

The clear aim of this provision is to exclude *Wards Cove* from coverage, despite the fact the bill was designed in part to overrule the Supreme Court decision in *Wards Cove.*

The provision apparently has its genesis in an amendment Senator Murkowski offered to the Civil Rights Act of 1990. He wrote at the time:

"During Senate consideration of S. 2104, the Civil Rights Act of 1990, I intend to offer an amendment that will inject a much needed element of fairness into the bill.

"As presently drafted, Section 15 of S. 2104 would apply retroactively to all cases pending on June 5, 1990, regardless of the age of the case. My amendment will limit the retroactive application of S. 2104 to disparate impact cases for which a complaint was filed after March 1, 1975.

"To the best of my knowledge, *Wards Cove Packing* v. *Atonio* is the only case that falls within this classification.

For your convenience, I am attaching a copy of Senator Murkowski's July 11, 1990 letter to his colleagues.

Similarly, a question and answer sheet Senator Murkowski circulated at the time says:

"Q. Why does the amendment use a March 1, 1975, date?"

"A. The date is keyed to the date the final complaint was filed in the *Wards Cove* case."

For your convenience, I am attaching a copy of the question and answer sheet.

Senator Murkowski later added the words "and for which an initial decision was rendered after October 30, 1983" to the amendment to ensure only *Wards Cove* would be affected. The initial decision on the merits after trial in *Wards Cove* was filed on November 4, 1983.

Clearly, the provision operates as a piece of special legislation for Wards Cove Packing Company, a firm which apparently financed a wide-scale lobbying effort for the provision.

I have three principal concerns about this provision.

First, the provision undermines precisely the ideas of fairness and equality the civil rights bill is at least partially intended to restore. It tells people an act designed to ensure evenhanded treatment can still be bent for the benefit of special interests.

Even if the civil rights bill could accommodate special rules for individual employers, Wards Cove Packing Company would be a poor candidate for such special treatment.

The Alaska salmon canning industry has had a long history of racial discrimination. Wards Cove Packing Company itself has received some of the sharpest criticism from individual Supreme Court justices in any discrimination case in memory.

Justice Stevens, writing in dissent for four justices in the case, wrote:

"Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines—bear an unsettling resemblance to aspects of a plantation economy." *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 644 n. 4 (1989).

Similarly, Justice Blackmun, wrote:

"The salmon industry as described by this record takes us back to a kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation * * *. This industry has long been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there." Id. at 662.

The Court of Appeals also found Wards Cove Packing Company's practices vulnerable to challenge under Title VII, writing:

"Race labelling is pervasive at the salmon canneries, where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouse.'" *Atonio* v. *Wards Cove Packing Co.*, 827 F.2d 439, 447 (9th Cir. 1987). And other lawsuits involving racial discrimination in the Alaska salmon industry have resulted in broad findings of liability.[1]

Placing Wards Cove Packing Company beyond the reach of the civil rights bill would be an affront to the minority workers—many from Washington—whom the Alaska salmon industry has long confined to menial and low paying jobs.

Second, Wards Cove is an ongoing case which ought not be decided on the basis of special legislation urged by an individual employer. An appeal in the case is currently pending before the Ninth Circuit.

When the case is finally decided, it should be decided on the same rules which apply to other cases.

The civil rights bill—including the disparate impact section—was designed to at least partially restore civil rights law to the settled condition it held for years before the Supreme Court's October 1988 term. Given the concern for continuity, an amendment which would permit a special exemption for only one case is markedly out of place.

I am told Wards Cove Packing Company based much of its lobbying effort on the fact it has spent large sums in defending the case. But these costs are being largely defrayed by insurers, whose liability for them is a matter of public record.

Third, the provision raises grave constitutional questions. Because it represents an effort by legislators to dictate the outcome of a single case by exempting the case from rules of general application, it violates the separation of powers. Because it singles out the Wards Cove plaintiffs for disfavored treatment without any overriding governmental interest, it is vulnerable to an equal protection challenge. And it implicates some of the concerns which underlie the prohibition against bills of attainder.

I would appreciate any efforts you can make to ensure this provision is deleted from the civil rights bill.

Thank you for your attention to this.

Yours very truly,

ABRAHAM A. ARDITI.

FACTS ABOUT WARDS COVE V. ATONIO

WHAT IS THE CASE ABOUT?

Employment practices at several Alaska salmon canneries operated by Seattle-based Wards Cove Packing Company, Inc.

The canneries operate during each summer's salmon run. Plaintiffs are about 2,000 past and present cannery workers, primarily of Filipino, Samoan, Chinese, Japanese, and Alaska Native descent, who held low-paying seasonal jobs on the cannery line but could not obtain higher-paying non-cannery jobs with the company.

Virtually all cannery workers were minorities, and most non-cannery employees were white. The two types of jobs were filled through separate hiring channels. Recruitment for cannery jobs was through a union hiring hall in Seattle and directly from Native villages near the canneries. Recruitment for non-cannery jobs was primarily by word of mouth, there was extensive hiring of employee relatives, there were few objective qualifications for non-cannery jobs, and openings were not announced to cannery workers. Cannery and non-cannery employees were housed in separate bunkhouses and fed in separate messhalls.

WHAT IS THE HISTORY OF THE CASE?

It was filed in 1974, three years after the decision in *Griggs* v. *Duke Power*, as one of three companion cases challenging racial discrimination by employers in the Alaska salmon canning industry. The other two cases resulted in broad findings of liability.

The *Wards Cove* case has been to court nine times in the 17 years since its filing, and has never been fully decided by the District Court on the *Griggs* standard. When the *Griggs* standard was applied by the Court of Appeals, the plaintiffs prevailed. The chronology:

(1) The U.S. District Court for Western Washington dismissed because the plaintiffs had not properly identified the defendant companies in their complaint.

(2) The 9th Circuit Court of Appeals reversed as to Wards Cove Packing Co., finding that it had been adequately identified.

(3) After a 12-day trial in 1982, the District Court found for the employer, but did not apply the disparate-impact analysis required under *Griggs* to the employer's so-called "subjective" practices. These included the use of subjective hiring criteria, word-of-mouth recruitment, and use of separate hiring channels for largely white and non-white jobs.

(4) A 3-judge Court of Appeals panel affirmed the District Court judgment in 1987, but this opinion was withdrawn because of a conflict between cases within the 9th Circuit on the applicability of *Griggs* analysis to "subjective" practices. The case was presented for review to the full Court of Appeals.

(5) The full Court of Appeals held that *Griggs* applied to all employment practices, and returned the case to its panel.

(6) The Court of Appeals panel held that the plaintiffs had made a prima facie case of disparate impact in hiring, housing, and messing, and remanded to the District Court to allow the employer to show the business necessity of its practices under the *Griggs* standard.

(7) Instead of offering proof of business necessity, the employer appealed the Court of Appeals decision. This resulted in the Supreme Court decision of June 5, 1989, altering the standards for disparate-impact cases, which the Senate-passed Civil Rights Act of 1991 purports to reverse. The Supreme Court remanded to the Court of Appeals for further proceedings.

(8) The Court of Appeals remanded to the District Court for application of the new *Wards Cove* standard.

(9) Applying the new 1989 standard, the District Court found for the employers and dismissed the case in June 1991.

(10) Plaintiffs have appealed on several grounds to the Court of Appeals. If the Civil Rights Act is enacted without the Murkowski amendment, the company will have to show, for the first time, the business necessity of practices which have a discriminatory impact on minorities. If the Act includes the Murkowski amendment, the workers will probably never obtain justice.

HAS WARDS COVE PACKING COMPANY BEEN "FOUND INNOCENT" OF DISCRIMINATION?

Never under the *Griggs* disparate-impact standard that applied when the case was filed. The District Court did not find intentional discrimination, but it did not properly evaluate the statistical evidence or apply the *Griggs* standard to all the practices resulting in a disparate impact on minorities.

The only court to evaluate Wards Cove's subjective practices under the *Griggs* standard was the Court of Appeals in 1987. It reversed the District Court's dismissal of the case. And it found Wards Cove's justifications for segregated housing and messing inadequate under *Griggs* (827 F.2d. 439).

If the company thought it could win the case on the merits, it could have let the Court of Appeals decision stand and offer proof of business necessity in District Court under the *Griggs* standard, instead of appealing to the Supreme Court.

The company has spent $2 million in legal fees and $175,000 in lobbying expenses to avoid having to justify its practices under the standards that applied when it was sued.

[1] *Domingo* v. *New England Fish Co.*, 727 F. 2d 1429 (9th Cir. 1984), modified, 742 F.2d 520 (1984); *Carpenter* v. *Nefco-Fidalgo Packing Co.*, C74-407R (W.D. Wash. May 20, 1982) (order on liability).

IF WARDS COVE IS COVERED UNDER THE CIVIL RIGHTS ACT OF 1991, WILL ITS 1971 CONDUCT BE MEASURED BY 1991 STANDARDS?

No. The Civil Rights Act of 1991 reinstates *Griggs*, which was decided in 1971. The Senate bill says the purpose of the Act is "to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in Griggs." Wards Cove's 1971 conduct would be judged by the standards set in 1971, which had prevailed until two years ago.

WHAT DID THE JUDGES WHO HEARD THE APPEALS THINK OF CONDITIONS AT WARDS COVE CANNERIES?

Judge Tang, 9th Circuit Court of Appeals: "Race labeling is pervasive at the salmon canneries, where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouse.' The district court did not find the conduct laudatory but found that it was not 'persuasive evidence of discriminatory intent.' Perhaps not, but the court must carry the analysis further and consider whether such a practice has any adverse impact upon minority people, i.e., whether it operates as a headwind to minority advancement." (From opinion, 1987)

Justice Stevens: "Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines—bear an unsettling resemblance to aspects of a plantation economy." (From dissent to Supreme Court decision, 1989)

Justice Blackmun: "The harshness of these results is well demonstrated by the facts of this case. The salmon industry as described by this record takes us back to a kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation, which, as Justice Stevens points out, resembles a plantation economy. This industry long has been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there." (From dissent to Supreme Court decision, 1989.)

Mr. DREIER of California. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a very hardworking member of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, I rise in strong opposition to this closed rule, a rule which prevents the House of Representatives from including itself under the antidiscrimination provisions adopted by the other body for its employees; a rule that makes Congress stand apart from the rest of society in not providing either jury trials or punitive damages for our own employees who happen to be the victims of unlawful discrimination; a rule that does not provide for any kind of judicial review over proven cases of discrimination in the House of Representatives; a rule which exempts Members of the House of Representatives from personal liability should they decide to intentionally discriminate or harass members of their staffs or other employees of the House of Representatives.

During the 1-minute speech time today we heard speaker after speaker say, yes, Congress was setting itself aside and, no, Congress was not setting itself aside. I am here to tell my colleagues that the plain text of the Senate bill that has come on over, which we will be considering under this closed rule, does statutorily exempt Congress from both the jury trials and the punitive damages that we are imposing upon the private sector, as well as exempts Members of the House of Representatives from personal liability that the other body decided to impose upon its own Member and officers and the President of the Senate.

That is not right. It is shameful. And the procedure by which this rule proposes to consider this bill will mean that those of us that wish to do away with congressional exemptions under the civil rights law will be precluded from offering amendments to do so. And that is shameful, too.

□ 1330

Mr. Speaker, it seems to me that if Congress is serious about bringing ourselves and our institution under the same rules that we are proposing to impose upon the private sector of our economy through this bill, this rule must be defeated. Defeat of the rule will not mean the killing of the civil rights bill for this year. It will mean that the civil rights bill can be put into a conference to work out not only the problems which I have discussed in the course of these remarks, but the legitimate concerns brought up by the gentleman from Washington [Mr. MCDERMOTT] as well.

It seems to me that going the closed rule route means that we are becoming a unicameral legislature, a unicameral legislature not of this body, but of the other body on the other side of the Capitol Building. The Framers of our Constitution intended for the Legislature of this country to be bicameral so that one House can correct the mistakes of the other. There are mistakes in this bill. They cannot be corrected if this bill is adopted and we send the Senate bill off to the President, unamended.

Vote down the rule.

Mr. WHEAT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as I mentioned, I have a number of speakers who wish to address the Wards Cove exemption issue, but I believe it is important that we put to rest the issue of whether or not the Congress has exempted itself from the Civil Rights Act of 1991. I think Members should note that House rule LI specifically grants all House employees full protection against discrimination based on race, color, national origin, religion, sex, handicap, or age. Rule LI further requires that these antidiscrimination rules must be interpreted to the principles of current law, which if in fact we pass the Civil Rights Act of 1991 would include that law for purposes of interpretation of House rule LI that does in fact give House employees the same rights and protections as employees in the private sector, including timely hearings, an appeals process, and the right to financial compensation.

Mr. DREIER of California. Mr. Speaker, I yield 30 seconds to my friend, the gentleman from Wisconsin [Mr. SENSENBRENNER] to respond to the statement from the gentleman from Missouri.

Mr. SENSENBRENNER. Mr. Speaker, nowhere in the Civil Rights Act of 1991 are there any jury trials or punitive damages for the employees in the Congress, and nowhere in the Civil Rights Act of 1991 is there personal liability for the Members of the House who happen to commit unlawful violation. That is not in House rule LI either.

Now, no right is worthwhile without an appropriate remedy. What is happening here is that the remedies are extremely curtailed in order to get Congress off the hook.

Mr. WHEAT. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. MATSUI].

Mr. MATSUI. Mr. Speaker, I thank the gentleman for yielding time to me.

I urge a no vote on the rule. I think this bill would have been a wonderful bill, it would have been a great bill. But it is not a good civil rights bill because of the issue the gentleman from Washington [Mr. MCDERMOTT] has raised. Let me read the preamble. Providing for the consideration of a bill to amend the Civil Rights Act of 1964 to strengthen and improve the Federal civil rights to provide damages in cases of intentional employment discrimination and clarify provisions regarding disparate impact cases.

As the gentleman from the State of Washington had mentioned, 2,000 people in one company, Wards Cove, happen to be exempted from the civil rights law we are about to pass, 2,000 people who brought the case to bring this issue to the House of Representatives in 1974, 17 years ago.

A civil rights bill is not a civil rights bill if it excludes from its provisions any citizen of this country. One can say the Constitution was upheld back in 1941 when 120,000 Americans of Japanese ancestry were taken from their homes and put in internment camps because a majority of them were not. That is not the way this country operates. That is not the fundamental principles of our Constitution, and this body should be shameful if it allows this rule to pass exempting 2,000 people who brought this case to our attention.

Mr. DREIER of California. Mr. Speaker, I am happy to yield 5 minutes to the gentleman from California [Mr. DOOLITTLE], a very hardworking Member who feels very strongly about this issue.

Mr. DOOLITTLE. Mr. Speaker, although self-styled a civil rights bill, this bill commits grave wrongs against our citizens by violating fundamental notions of justice and equity contained in our Constitution and Declaration of Independence. This bill wrongs employers by denying them certainty in the law, a lack of which gave rise to the disgraceful set of facts surrounding Wards Cove, where an employer was bounced back and forth eight different times before various courts, at least once before the Supreme Court of the United States, hundreds of thousands of dollars of attorneys' fees, reams of negative publicity and never found guilty of any discrimination.

Now, Wards Cove is exempted by this bill, thank goodness. However, all the other potential future employers are going to have to fear what Wards Cove went through, and the natural result will be to adopt quotas in order to avoid that type of costly and embarassing litigation. This bill wrongs employees of all races and both genders who have the right to be considered for employment and promotion on the basis of merit, not race or gender. This bill commits grave wrongs to all Americans by taking away the right in employment discrimination cases to be deemed innocent until proven guilty, certainly one of the fundamental rights of Americans.

Mr. Speaker, this legislation is also a lawyer's bonanza. Under this bill we will have jury trials, and we will have damages up to $300,000 that may be awarded; oh, yes, and court costs and attorneys' fees and expert witness fees. This is a tremendous injustice and burden to any employer.

The Daniel Lamp Co. is a case that many of us are familiar with from 60 Minutes which aired the piece "Numbers Game" CBS News. This company had two white employees, the president and his father, a man who was interned in Auschwitz. The rest of the employees were racial minorities, 18 Hispanics and 8 blacks. The EEOC, however, did their disparate impact analysis under title VII, which this bill for the first time places in statute with our imprimatur, and said "Sorry, you needed 8.45 blacks. You have a problem here and owe $145,000."

Now, Daniel Lamp was also a disparate treatment case, involving intentional discrimination. But I would submit that every employer in America is going to be faced with these similar sets of circumstances and will be compelled to use quotas in order to avoid litigation.

When Martin Luther King argued for civil rights over 20 years ago he envisioned a society in which people would be judged by the content of their character rather than their race, ethnicity, gender, relevant labor markets or meaningless statistics. Today, sadly, we are considering a rule on a bill, and soon will be considering the bill which would force employers to hire based on the numbers, which would reverse the traditional concept of being deemed innocent until proven guilty, which would guarantee a morass of costly litigation and which would invalidate merit as the basis for employment or job advancement.

I believe this bill is a true insult to the concept of civil rights, meaning the rights that all Americans of both genders and all races enjoy, thanks to our Constitution and Declaration of Independence.

Mr. Speaker, I urge the defeat both of the rule and of the bill.

□ 1340

Mr. WHEAT. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the distinguished gentlewoman from Hawaii (Mrs. MINK).

Mrs. MINK. Mr. Speaker, I thank the gentleman for yielding me this time.

Today marks a very sad day in a way, because we are confronted with a situation of having to vote for a rule which in itself will bar this House from considering the ignominious provision which was added in the Senate which debases the very title of this bill, and that is civil rights for the people of this country. The Senate, in some sort of a deal in order to collect votes, accepted an amendment which would bar the very plaintiffs that have been working for 17 years to perfect their rights in the workplace from continuing with their litigation.

Every other plaintiff with a pending case can move forward with the new rules, with the new procedures that this bill is going to establish, except for the plaintiffs in the Wards Cove case, Eskimos, Asian Pacific Americans who work in this fishing cannery, who have the most demeaning jobs, who have no opportunity for getting anything better, segregated living, who stuck together for their rights and for their economic justice, just on the verge of having this perfected, now are being stricken from the bill and told that they are the only plaintiffs, the only Americans in this country that cannot benefit from this bill.

I truly believe that the Constitution calls us to ration and to reason today and to the adoption of common sense and for the belief in equal equality in this country.

We cannot allow this particular provision to prevail, and I call upon my colleagues in the name of justice and equality to vote down this rule so that we may correct this bill.

Mr. Speaker, the cruelty of special interest law is seldom visible; it is usually hidden and obscure.

Today the House is expected to pass the heavily compromised civil rights bill as negotiated between Republicans and the White House.

One of the deals made to secure its passage in the Senate was that the plaintiffs in the Wards Cove case could not proceed under the provisions of this bill. They and only they would be barred.

Today the cruelty of this deal is reflected in the eyes and in the faces of the unbelieving plaintiffs in the Wards Cove case, who as a result of this exclusion will be the only Americans who cannot benefit from the passage of this bill.

Every other plaintiff that has a pending case can now proceed with their case, except for the Wards Cove plaintiffs.

The Wards Cove plaintiffs have waited 18 years for their case to be heard. It is still on appeal in the ninth circuit court.

The majority in support of this bill tell us that this bill corrects the law in the Wards Cove case. They tell us that it assures justice for all.

For all except the Wards Cove plaintiffs. The cruel irony is that the very people who brought this case to the forefront, the very people whose suffering as victims of physical segregation and other degrading workplace discrimination are the only ones who will not be able to benefit from the return to the Griggs standard of justice.

Think of it, every other American will be able to benefit from the new definitions of proof required in workplace discrimination, except these long-suffering, mostly impoverished, Eskimos, Filipinos, Samoans, Chinese and Japanese for whom this was their final hope for justice.

To strike out only these folks from their long awaited chance for justice under the very terms that they fought and struggled for is deliberately cruel, mean and a violation of our basic tenets of justice, equal protection and due process of law.

A Congress sworn to uphold the Constitution cannot violate the simple rights of these Asian-Pacific-Eskimo workers to be treated exactly the same as every other American. I urge you to vote no on the rule on the civil rights bill so that this unfair denial of the basic rights of these workers can be removed from this bill.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE], a hard-working member of the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I am going to vote for this rule, not happily, because I think we are making a mistake that I hope and pray will be corrected elsewhere and speedily, and that is, as we rush to ratify the settlement, the compromise settlement that has been reached between the parties who negotiated it, we have created a lack of symmetry between remedies for Senate employees and House employees.

A Senate employee, having processed their complaint for discrimination through their fair employment commission over there, gets to appeal the decision to the courts, but not so in the House. I had offered an amendment that would have permitted House employees the same right of court appeal as the Senate employees have, but evidently the agreement is so fragile that nobody wants to open up this bill to any amendments even if they are per-

fecting amendments, even if they provide a symmetry between House employees and Senate employees.

There is one other problem that I think is extremely serious, and that is we in the House and those Members of the Senate can hire people, and we can consider in the hiring their political affiliation, their political compatibility, and their domicile because of the nature of the work that we do. But we do not provide such protection for local governments, for State governments, nor, indeed, for the White House, and so local governments, State governments, State legislators, county executives, Governors, and the President may well be subject to suits for discrimination if they hire somebody without reference to political party, political compatibility, or domicile.

So by failing to include within the benign umbrella of protection from discrimination suits local and State governments and the Presidency but protecting ourselves and the Senate, the other body, I think that is a defect in this bill that may come back to haunt us, and I would have hoped that an amendment by the gentleman from New York [Mr. SOLOMON] would have corrected this problem, and that would enhance the desirability of the bill, not detract from it.

I am still going to vote for the rule, however.

Mr. WHEAT. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. Mr. Speaker, we are talking about 2,000 Americans. We are talking about the Constitution of the United States.

Do you think for a second that this is a compromise? This is extortion.

When I came into this House, the Speaker said to me:

You can have different views. You can express different views. But show respect for this House, show respect for the Constitution, show respect for what brought you here.

The people in my district, three-quarters of them, are of a different race, different ethnic origin than I am. I treasure being here. I treasure the Constitution. I am living proof of what can happen when you dispose of race, when you dispose of ethnicity, when you dispose of a cultural background different from your own and give the person a chance.

What we are appealing for today is for Members on this side of the aisle to literally vote for the Constitution and vote for something more than an extortion in an agreement made.

I will give you that the leadership engaged in good faith with one another in trying to come to this agreement. They have delivered it to the floor; I will grant the Committee on Rules that in bringing it to the floor. But we do not have to vote for it. They have done what they needed to do. They have kept their word. Now we have to keep our word to the people of this country.

Do you think this would be happening if it was 2,000 Irish-Americans in Boston or 2,000 Jews in New York City or if it was Hispanic-Americans in Miami or Houston, if it was Italian-Americans in San Francisco? No; it is because these people are without the power, and it comes as a result of the intervention by somebody who himself has ancestors who came here to be free, who carried their name from people who came across an ocean to come to this country, "Give me your poor, give me your tired, give me you huddled masses." That means something to me, and it should mean something to us in this House.

People of conscience in this House, vote down this rule and give us a chance to do the right thing for this country and for this House of Representatives and for this Congress.

Do not invoke the name of the President as if you were going through the 12 stations of the cross and tell me that these people have to sacrifice themselves on the altar of civil rights for some but not for others.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise today in support of the Rule and the Civil Rights Act (S. 1745) and I would like to commend the distinguished chairman, the gentleman from Texas [Mr. BROOKS], and the distinguished ranking minority member, the gentleman from New York [Mr. FISH] for their efforts in finally bringing a civil rights bill to fruition. I would also like to commend the President and the senior Senator from Missouri, [Mr. DANFORTH] for striking an acceptable compromise on this matter, so that we are able to put aside insignificant discrepancies and finally pass this legislation that is truly worthy of becoming law.

Unfortunately racism, sexism, and religious intolerance are among the prejudices that still exist in our society today. I would gladly lend my name to any law that would effectively erase the unfair, ignorant attitudes of prejudiced people in our Nation; but this body cannot legislate morality.

There is, however, a responsibility, that lies within in our purview for this body to legislate a workable remedy to the recent reverses to the Civil Rights Act that have been handed down by the Supreme Court.

While we cannot legislate morality, we can provide effective judicial recourse to victims of unlawful discrimination.

Mr. Speaker, we all seek to enhance a prejudice-free America, but until such a time as every citizen in this Nation looks upon women, persons of color, or of any religion as an equal, we must continue to advocate the passage of laws that curtail the destructive, destabilizing byproducts of spiteful bigotry.

When this is not a perfect rule and is not a perfect bill, by enacting this legislation, we will be doing the people of our Nation a great justice. Accordingly, I urge my colleague to support the rule and the Brooks-Fish substitute.

Mr. WHEAT. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, first of all, I have had an awful lot of trouble with the civil rights bill, because it really has treated women as second-class citizens.

It is like we are all supposed to be so delighted that after 200 years we finally got on the bus, but the problem is we are supposed to go to the back of the bus because it is capping damages for women.

□ 1350

OK. I finally came to terms. At least if it is discrimination against every single woman, you have got to have some kind of compromise, and the White House said no way, no way at all would they change one iota from that.

So you swallow hard and you finally accept the caps; but at least it does not single out any group of people.

Then suddenly here comes Wards Cove. Now, let us talk about this. The whole reason we have this legislation is because you had politicized courts that undid the civil rights that had been adopted and had been accepted by people for years. These courts interpreted these rules in a very different way, and so we are taking this blob back to where it used to be. This is just a restoration.

The people who got caught up, the people who were in this new revisionist civil rights, which mean zero civil rights, are now going to be sacrificed.

I do not think there is anything worse than special interest legislation in a civil rights bill. At least they hit every woman equally; but here you are talking about 2,000 people who have been asked to be treated the way they would have been treated under prior court decisions had they ever been interpreted that way, and now we are going to go back to the prior court decisions, but we are going to say to them, "Too bad. Nice you called it to our attention, but the people who own the company are much more moneyed and more powered than you are, so you get rolled, but other people in the future will get civil rights as they used to be."

I think special interest legislation stinks anywhere, but I think special interest legislation in a civil rights bill is absolutely intolerable. I will vote "no" and I am shocked that the White House is cutting that kind of deal on civil rights and trying to look pure.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I just want to welcome a few of the people on the other side who have never voted for open rules whenever we proposed them to the open rule club. It is kind of nice that all of a sudden they realize that it may be worthwhile debating some of these issues from time to time.

I am here to make one point, though. There are several people who have come to the floor who have indicated that we are dealing with a quota bill in the civil rights bill. I am one who has offered amendments on several occasions on the House floor, going back into the 1980's, trying to end the practice of quotas in this country. I have gone through this bill very carefully. There is absolutely no quota language in this bill.

Now, you can oppose it because the penalty section is too tough for you, you do not like the way small business employers are treated from that standpoint, but you cannot in any way suggest that there are quotas in the bill.

The President of the United States won a major victory in the negotiations here with regard to that issue. The President has assured Americans that they do not have to fear the use of quotas in the workplace. I think that is a good thing.

I realize there are many Democrats who are upset about that. The Democrats wanted to impose a quota system. Many Democrats in this House voted for quotas, but this bill as it comes back, the compromise does not include quotas.

Mr. WHEAT. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Speaker, the gentleman from Washington, [Mr. MCDERMOTT] sought permission from the Rules Committee to offer an amendment to this bill.

I strongly supported that request, and I salute the gentleman's leadership and outstanding dedication to principle.

Unfortunately, his amendment was not made in order.

Mr. MCDERMOTT'S amendment would have removed from this bill one of the most outrageous pieces of special interest legislation I have ever seen.

This provision, added by the other body as part of a compromise with the White House, grants an exemption from this bill to a single company in a single case.

One of the Supreme Court decisions to be overturned by this bill was rendered in the case of Wards Cove Packing Co. versus Atonio.

That case was filed by 2,000 Wards Cove employees, mostly of Asian-Pacific and Native Alaskan ancestry.

The discrimination they faced was so severe that, in his dissent in the Wards Cove decision, Justice John Paul Stevens said that the practices used by the company "bear an unsettling resemblance to aspects of a plantation economy."

Minority employees were housed in separate facilities, they ate in different mess halls, they worked in different jobs, and they were paid different wages.

The nicknames that were given to the bunkhouses they lived in and the equipment they used were outrageous.

I will not mention them on this floor. I know from personal experience how painful such words can be.

Mr. Speaker, the employees of Wards Cove who stood up and challenged this environment were seeking justice, for themselves and all Americans.

Through review after review, and appeal after appeal they persevered.

Even when the Supreme Court pulled the rug out from under them by changing the rules, they didn't give up.

They were given heart by this bill, which promised to overturn the Wards Cove decision.

Frank Atonio and the other plaintiffs have faith in this country. They expected to be vindicated in their struggle.

And then, in the 11th hour, just when it appeared that their 17-year search for justice had succeeded, a provision was added to the bill.

That provision sends a message to Frank Atonio and the employees of Wards Cove.

It says, yes, we'll overturn the Supreme Court's Wards Cove decision.

It says, yes, we will make it clear that this type of discrimination should never happen to any American.

No. Hold on. Let's amend that. It says this should never happen to any American—except you.

As currently drafted, this bill says that all other Americans will be protected by overturning the Wards Cove decision—except the people who worked at Wards Cove.

Mr. Speaker, that's just plain wrong.

In this bill, which was prompted by the principles of fairness and equity, we see a provision that has nothing to do with either.

The Wards Cove exemption is not about fairness. It is not about equity. It is about who can hire the most effective lobbyist. It is about who can manipulate the process.

It has nothing to do with principle. It is special interest legislation at its absolute worst.

The American people are tired of politics as usual. We all know that. We've seen ample evidence.

This exemption is precisely the type of backroom deal that fills them with a fully justified moral outrage.

Mr. Speaker, I understand about compromise. This place could not function without it.

But I think we must begin to ask ourselves how much we are willing to give away to get a bill.

I have heard the President would veto this bill unless this exemption for Wards Cove is included.

Before we shrink away from that prospect, we must keep one thing firmly in mind:

Compromise is fine. But unless we are careful in the process of achieving it we may someday wake up to realize we have bargained away our souls in the process.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, apropos of the Wards Cove issue that has really irritated so many people here, I want to point out that section 402 of the bill we are about to deal with specifies that the act and the amendments made by the act take effect on the date of enactment. They have no application to pending cases or to cases arising before the effective date of the act. The act is prospective. It has nothing to do with Wards Cove.

Now, the offending amendment that was put in by the Senate is unnecessary. It is surplusage. It does not accomplish or achieve a thing and it really should not be the subject of so much excitation.

The fact is the bill is prospective. It has nothing to do with Wards Cove. Parenthetically, Wards Cove has been in the courts for 24 years and someday it ought to be closed, but this bill is prospective, and therefore Wards Cove is not affected by it.

Mr. WHEAT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. EDWARDS], the distinguished chairman of the subcommittee who has worked so hard on this bill.

Mr. EDWARDS of California. Mr. Speaker, I am the chairman of the subcommittee that wrote the original bill, along with the Education and Labor Committee, chaired by the gentleman from Michigan [Mr. FORD]. We were very disturbed when we found that the Senate has included this special exemption for the Wards Cove Packing Co. provision. It is outrageous.

I went to the Rules Committee, with the support of all the Democratic Members of the subcommittee, to ask for a vote today on that particular issue. We did not get it. However, I am going to vote for the rule, and I will tell you why. It is not going to do any good to destroy this bill. There are going to be thousands, maybe millions of employees in the future that we are cutting out of rights if we do.

I assure you also that this bill if it goes back to the Senate will probably never emerge again, because it is a good bill, except for that provision and the provision that the gentlewoman from Colorado spoke about, and we in-

tend to do something about that someday.

We have prepared for the gentleman from Washington [Mr. MCDERMOTT] who will be the author of the bill, a free-standing bill. It will be on the floor next week to deal with the Wards Cove issue. We will have it on suspension. I would trust that we would get an overwhelming vote for it.

We have been discussing the matter with certain leaders, and I cannot mention their names, of course, in the other body, who have agreed that they will be of assistance to us in enacting this and the issue will be taken care of.

I deeply regret that it is in the bill. The subcommittee tried to get rid of it. It is an outrageous position, but it is not going to do any good to shoot down this bill and keep thousands and thousands of people in the future from having the benefit of this necessary legislation.

Mr. DREIER of California. Mr. Speaker, I yield 2½ minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, this bill is not a compromise, it is a cave-in. It is a cave-in to people who want to pass a piece of legislation, even if this is a quota bill and even if it does not help anyone that civil rights bills are supposed to help.

We are considering a bill which masquerades as the Civil Rights Act of 1991. This bill, we are assured is a compromise. I have examined the original bill and I have seen the changes that were made as a result of negotiation. This bill is not a retreat, it is a complete surrender. Any changes which were made to this bill are cosmetic and inconsequential.

I remain opposed to any bill which enshrines the discriminatory practice of race-based quotas. This bill does that. This legislation is substantially the same bill as the one that the President vetoed last year. The effect of both bills is to put pressure on employers to adopt quotas to protect themselves against lawsuits based on an analysis of the percentage of minorities in that company's work force.

Remedies currently exist which protect the rights of both employers and employees. Any person who believes that he or she has been the victim of discrimination currently has the right to seek redress through our court system. In doing so, victims of real discrimination may rely on existing laws. These laws have been fairly interpreted by the Supreme Court. That is the proper constitutional function of the Court. But now, Members of the other body seek to overturn these precedents.

How ironic that while interrogating Justice Thomas, some Members of Congress expressed such respect for judicial precedence, only now to try to achieve through legislation, the kind of social engineering and antibusiness meddling that the Supreme Court has properly refused to sanction.

One of the Supreme Court decisions which this legislation seeks to overturn is Martin versus Wilkes. The effect of this portion of the bill is to deny legal remedies to persons who are discriminated against as a result of quotas. Should an employer who is now being sued decide to give certain hiring benefits to a particular group, members of another minority group subsequently harmed are barred from seeking adjudication for their legitimate claim of discrimination. This case was justly decided by the Supreme Court and this bill would overturn it.

This bill is an antibusiness, anticompetitive piece of legislation from the Democrat Party which places the importance of an election over returning our economy to prosperity and growth. They place passage of this misguided bill over legislation that would truly help those in need.

Unfortunately, many Republicans, who are committed to real progress in civil rights for all Americans, are supporting this bill. They do this because this bill is perceived as helping and protecting America's less fortunate, those in the underclass trapped in our inner cities and rural pockets of poverty. But this bill will do nothing to alleviate the pain of those trapped in misery and deprivation. It is not the goal, nor the consequence of this legislative initiative. If it were the goal, then we would be enacting urban enterprise zone legislation, promoting new businesses in areas with high portions of disadvantaged people, and by allowing parents to choose which schools to send their children. And by ridding the inner city of drugs, crime, and welfare dependence.

If we did these things, then, future generations would no longer suffer barriers to equal employment, because we would raise a generation of Americans free from these scourges which undermine dignity, liberty, and opportunity.

This bill does not do these things.

So, I would ask my friends not to vote for this bill simply because it's called the Civil Rights Act of 1991. Look into this bill's essence and what you will find is the same diseased and discriminatory language which we have correctly opposed over and over again.

I am doubtful that we need new civil rights legislation. But if we do, let us vote for a legislation which does not contain quotas.

Let us commit ourselves never to debase the term civil rights by agreeing to any race-based preferences for any purpose at any time. And in helping America's less fortunate, let us seek new solutions which empower the poor and uplift any American who longs for a better life.

Let us act to expand opportunity and economic mobility instead of succumbing to quotas and meaningless so-called civil rights legislation.

Vote "no" on the so-called civil rights bill.

□ 1400

Mr. WHEAT. Mr. Speaker, I yield 1 minute to the distinguished chairman of the Committee on the Judiciary, the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of the rule which will make in order the consideration of S. 1745. The consideration of legislation to restore equity in the workplace has been an agonizing process for two Congresses, now. It has engendered inflammatory rhetoric and flimsy arguments that have had the effect of thwarting the desire of the overwhelming majority of both Houses of Congress to enact a civil rights bill. Now we have a breakthrough and a chance to move this bill to completion of the legislative process. Let us enact this rule and pass this bill and send it to the President for his signature. In doing so, we will end this sorry chapter in our political history on a positive and constructive note. I urge support for the rule.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentelman from California [Mr. RIGGS].

Mr. RIGGS. I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to thank my colleague, the gentleman from California, who explained earlier that I was one of several Republicans who attempted to offer an amendment to end the double standard which exempts the Congress from the potentially burdensome requirements of this bill, the fix was in. The deal had been cut behind closed doors. No amendments, and, God forbid, no open, honest debate on a matter of congressional coverage on this floor.

My amendment, as Mr. SENSENBRENNER's and others, would have provided procedures to fully protect the rights of our employees, including the right of judicial review under the Civil Rights Act of 1991 and the Civil Rights Act of 1964.

There are those who have the gall to say that our own internal processes and procedures, rule LI, as carried out by the Committee on House Administration and the Fair Employment Practices Office, provides the same coverage to our employees as their private sector counterparts. That is nonsense.

Put the two standards alongside one another, and you will come to that conclusion.

Our procedures do not provide the same rights and remedies to our employees and, conversely, do not impose on us the same responsibility as private sector employers.

My amendment would give the Congress the opportunity to resolve em-

ployee disputes through our own rules but retain a private right of action for our employees if these rules fail to resolve the grievance.

To those of us who suggest that this process works well, as Mr. DERRICK and Mr. WHEAT did in the Committee on Rules yesterday, I wonder what their response would be to the employees of their former colleague from California who was reproved in three instances of sexual harassment. I wonder what a survey of our own employees would tell us as to whether or not they would like the same rights as their private sector counterparts.

Mr. Speaker, there is simply no good reason why the Congress should be exempt from this bill. If we are going to tell people how to run their businesses, then, by God, we should apply the same provisions to the U.S. Congress.

This issue should have been brought to the floor. I urge my colleagues to vote against a rule which would continue the double standard, the cynical and hypocritical double standard that allows Congress to live above the law.

Mr. WHEAT. Mr. Speaker, I yield 2 minutes to the author of House rule LI, the distinguished gentleman from California [Mr. PANETTA], chairman of the Committee on the Budget.

Mr. PANETTA. Mr. Speaker, I rise to speak to the distortions here that were presented with regard to the House covering its employees. I am pleased that the Senate decided to cover its employees. But, very frankly, the process that was adopted by the other body, I think, is badly flawed, and I think questionable from a constitutional point of view in terms of the separation of powers.

What I want to remind Members of the House of is that the House of Representatives addressed this problem 3 years ago; not in this bill, not in the bill tomorrow, but 3 years ago.

On October 4, 1988, the House of Representatives adopted a process and adopted a fair employment practices resolution. That was adopted on a bipartisan basis. Working with whom? Lynn Martin, PAT ROBERTS, Steve Bartlett, Gus Hawkins, PAT SCHROEDER, working together to develop a process that covers employees of the House and provides protection from discrimination based on race and color and national origin and religion and sex and sexual harassment as well as the fair labor standards laws.

Now, is the process working? Let me assure you that it is.

In 1989 the office processed 326 inquiries that were developed. In 1990 the office handled 262 inquiries. Two cases have proceeded to the hearing stage, and one case involved monetary damages.

The fact is that the House has provided a process to govern itself, and that process is working, and it recognizes the separation of powers between the executive, judicial, and legislative branches.

It is unfortunate, unfortunate that the Senate did not follow the example of the House long ago. But it would be a tragedy if we were to give up the process that we have put in place here in the House of Representatives.

Mr. Speaker, in the Senate-passed civil rights bill, S. 1745, the U.S. Senate for the first time establishes a process to protect their employees from discrimination.

I would remind Members that the House of Representatives addressed this problem 3 years ago. On October 4, 1988, the House of Representatives voted to create a process, governed by the fair employment practices resolution, which applied basic civil rights protection to employees of the House.

The fair employment practices resolution was the product of my work with PAT ROBERTS, Gus Hawkins, PAT SCHROEDER, DICK DURBIN, DENNIS ECKART, Lynn Martin, and Steve Bartlett during the 100th Congress.

The fair employment practices resolution provides House employees and applicants for employment with protection against discrimination based upon race, color, national origin, religion, sex—including marital or parental status and sexual harassment—handicap, or age. Also, in 1989, as part of the Fair Labor Standards Amendments of 1989, protection under the Fair Labor Standards Act was provided to House employees.

The basic elements of the fair employment practices process are as follows:

OFFICE OF FAIR EMPLOYMENT PRACTICES

An Office of Fair Employment Practices exists to counsel, mediate, investigate, and hear alleged violations.

PROCESS

The process to resolve complaints of violations of the antidiscrimination provisions involves three steps.

COUNSELING AND MEDIATION

An employee has 180 days from the time of an alleged violation to contact the Office of Fair Employment Practices to request counseling. The counseling period lasts for 30 days. At the end of the 30-day period the individual may proceed to mediation, which is also conducted by the Office.

FORMAL COMPLAINT AND A REQUEST FOR A HEARING

Not later than 15 days after the end of the counseling period, the individual may file a formal complaint with the Office. This may be followed by a request for a hearing, which will allow the individual to be represented. A written decision is issued by the hearing officer within 20 days after completion of the hearing.

FINAL REVIEW BY REVIEW PANEL

Either party may seek a final review by the review panel. The review panel is made up of four members of the House Administration Committee: two Democrats and two Republicans—two officers of the House and two employees of the House. The review panel will examine the record of the hearing by the Office, statements from the parties, and, if necessary, may hold its own hearing. After reviewing the record a written decision is submitted to both parties.

REMEDIES

The remedy options provided by the resolution for application by both the Office and the Review Panel are: First, monetary compensation, to be paid from the contingent fund of the House of Representatives, or from clerk-hire if a serious violation is found; second, injunctive relief; third, costs and attorney fees; and fourth, employment, reinstatement to employment, or promotion—with or without back pay.

Currently the Fair Employment Practices Office is based in room 115 of the O'Neill House Office Building, telephone 225-0880. In 1989 the Office processed 326 inquiries and in 1990 the Office handled 262 inquiries. Two cases have proceeded to the hearing stage and in one case monetary damages were awarded to the plaintiff.

I am pleased that the U.S. Senate adopted an antidiscrimination process similar to that developed and implemented by the House of Representatives. Basic fairness demands that the Congress apply to itself those laws relating to employment which apply to the private sector and the executive branch.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. RIGGS], who would like to respond.

Mr. RIGGS. I thank the gentleman for yielding this time to me.

Mr. Speaker, as someone who was not here 3 years ago, I would like to ask my friend and colleague, the gentleman from California [Mr. PANETTA], the distinguished chairman of the Committee on the Budget, if in fact the procedures that we have set out in rule 51 provide for the right of judicial review for our employees?

Mr. PANETTA. Mr. Speaker, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding to me.

Mr. Speaker, the issue was discussed at the time we developed the procedures, and the discussion at that time centered on the importance of the separation of powers because at that point the judicial branch said what the House does with regard to its employees, what the Congress does with regard to its employees, should be handled by that institution. And to have a court then review the actions against our own employees would be a violation of the separation of powers.

Mr. RIGGS. Mr. Speaker, reclaiming my time, I understand the gentleman's

argument. I would like the gentleman to know there were a number of his colleagues from that side of the aisle yesterday who went before the Committee on Rules to say that every American—I am assuming by "every American" they certainly included our employees—should have their day in court if the need arises. I wanted to make that point to the gentleman.

Mr. WHEAT. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. BONIOR], the distinguished majority whip of the House of Representatives.

Mr. BONIOR. Mr. Speaker, I thank the gentleman for yielding. I just want to put to rest and reiterate the remarks of the distinguished gentleman from California [Mr. PANETTA]: Congress is not, I repeat, not exempt from the Civil Rights Act of 1991 or any other civil rights law. We are, in fact, governed by the standards and the objectives of every piece of workplace related legislation passed by Congress and signed by the President in recent years. And this includes the Americans With Disabilities Act of 1990, the Civil Rights Act of 1964, Title VII; the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Equal Opportunity Act of 1972, the Minimum Wage Fair Labor Standards Act of 1972, and equal pay. It would have included the Civil Rights Act of 1990 and the Family Leave Act, had the President not vetoed them. The fact of the matter is, as the gentleman from Missouri [Mr. WHEAT] and the gentleman from California [Mr. PANETTA] have stated, House rule LI specifically grants House employees full protection.

The gentleman from California has just given you the numbers, as to what they have been doing with respect to equal opportunity for employees in this body. The House employees have the same rights and protections as employees in the private sector and they have the full range of remedies, including timely hearings, the appeals process, and the right, the right, I repeat the right, to financial compensation. This legislation explicitly grants—that which we are going to take up—House employees the right to damages in case of intentional discrimination.

□ 1410

The constitutional provision that seems to be lost by many people is important here. The constitutional provision of separation of power requires, the legislative branch to establish its own separate procedures to enforce these rights. The House enforcement mechanism is in many ways tougher, tougher and more thorough, than the procedures of the executive branch.

Mr. Speaker, I thank my colleague for giving me the time to illuminate my colleagues on this important point.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from San Diego, CA [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Speaker, as my colleagues know, as a freshman I came aboard, and during the original civil rights debacle, which I personally feel was written as a tool against the President, I walked to the other Members on the other side of the aisle, my good friends, the gentleman from Georgia [Mr. LEWIS], who was very active in civil rights bills, and the gentleman from California [Mr. DELLUMS], and some of the other speakers on the Black Caucus, and I said, "Why don't we come to grips with something that will help people?"

On the Republican side we rattle our swords, they rattle their swords, a lot of it based toward 1992. I am afraid, if we open up a rule like this, we are going to end up with another civil rights bill that we cannot support. I ask, "Why can't we get together, and sit down in the name of helping the American people to where we can't come across and approve a civil rights bill?"

Mr. Speaker, there are things in this I do not like. I do not like where business is proven guilty instead of proven innocent, and there are some things I am sure my colleagues do not like on the other side, but it is a start. Then let us come back and adjust it, if we can. But for God's sake for once; the American people are mad at this body because we cannot act because of politics; let us take the politics out of it, and let us help some people.

I would love to walk down the aisle today or tomorrow and say, "Let's support a civil rights bill that will help people. It may not be perfect, but on both sides it is something we can agree with and we can do."

Mr. Speaker, the bill before us today, finally it is a different bill. It is not a bonanza for lawyers. The standards for disparate impact are clarified. We cap the damages, which was my main concern in the other one. Some people on the other side may feel it, but at least we can do some good.

So, I urge Members on both sides of the aisle to support the civil rights bill. Let us help Americans even though this bill may be imperfect. It is an area where for once the American people can look at us and say that we took out the politics and helped people.

Mr. WHEAT. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri [Mr. GEPHARDT], the distinguished majority leader of the House of Representatives.

Mr. GEPHARDT. Mr. Speaker, Members of the House, I hope Members will vote for this rule. I realize that there are many among us who are bitterly disappointed with the rule and its failure to allow consideration of the Ward's Cove language, to allow consideration of the capping of damages. I hope that Members will see fit to support the rule in any event.

Mr. Speaker, we can and we will bring up the issue of Ward's Cove exemption in separate legislation as soon as humanly possible and try to get it on the President's desk so that that issue can be dealt with. My view is it should not have been exempted. I am sorry that it was.

One other point, and that is the issue of House coverage that has been brought up. I just want Members to understand that we are covered. House Rule II specifically grants House employees full protection against discrimination. House employees have the same rights and protections as employees in the private sector, and this legislation explicitly grants House employees the right to damages in case of intentional discrimination.

So, I urge Members to understand that we are covered in a legally appropriate way, and it is wrong in my view to suggest that somehow we have tried to get out of the coverage of these laws. This House has led on this issue. The other body has not been doing these things, while we have been doing them, and I think we have been doing them well.

Mr. Speaker, it is time to stop attacking this institution saying that somehow we have slipped out of some coverage because we were trying to do something for ourselves that we were not doing for everybody else. That is not the case. This institution is covered, and it is covered appropriately, and we should leave those provisions in place because they have done the job and done it well.

Mr. Speaker, I urge my colleagues to vote for this rule.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. RIGGS].

Mr. RIGGS. Mr. Speaker, I thank the gentleman from California [Mr. DREIER].

Mr. Speaker, I just want to make sure that our colleagues sitting back in their offices watching this debate on the rule understand the logic, if one can call it that, running through the argument made by our colleagues on the other side of the aisle. It is a very good argument, I guess, If one happens to be a supreme cynic. All employees are equal, only some employees are more equal than others. The ones more equal are the ones in the private sector who have legal rights and remedies, who, if they can demonstrate a cause of action, can proceed in a court of law to try and recover damages in the instance of any form of harassment, and there is also a very big distinction between how we treat ourselves and how we treat private sector employers. We are obviously not subjecting ourselves to the same liabilities and the same responsibilities as we impose on private sector employers.

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, there is also one other big difference, and that is that the Senate bill says that Senators are personally liable for acts of discrimination that they themselves commit against their employees. With us the taxpayers pick up the damages.

Mr. RIGGS. Mr. Speaker, I thank the gentleman from Wisconsin.

The SPEAKER pro tempore (Mr. MONTGOMERY). The gentleman from California [Mr. DREIER] has 4 minutes remaining, and the gentleman from Missouri [Mr. WHEAT] is entitled to close the debate.

Mr. DREIER of California. Mr. Speaker, I yield the balance of our time to our revered Republican leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker, I want to urge Members to support this rule.

Mr. Speaker, I have been involved in a number of other very delicate negotiations with unemployment compensation, the banking bill, as we get toward the end of a session, and there are some real delicate matters to be worked out, and it is a tortuous kind of a trail that we follow around here from time to time.

However, Mr. Speaker, I say to my colleagues that the civil rights bill has been around for a good long time, and there are Members much better qualified than I am on the specifics and the nuances of that particular measure. But I know, in talking with Members from the other body, what trauma they were going through in trying to find that magic key to get that baby adopted over in the other body. Within the last half an hour I have talked to several of those principals who were involved and said, "Please, please don't let this thing fall apart or become unraveled over in your body," and I said, "We're going to try and do our best to pass this rule and get on with it."

Now for my dear friends who have some concerns about, maybe, ourselves, the State legislatures and some of those other matters out there that I think need addressing, we can do that in a separate piece of legislation. I think we have some reasonable assurance from the distinguished chairman of the Committee on the Judiciary, and the Speaker of the House is nodding affirmatively, that we can get action on that at the appropriate time.

But for now I think we have just got to address the issue forthrightly, and I have no alternative but to ask my Members on my side, and both sides for that matter, to support this rule so that we can get on with the deliberations and have the President sign what he says he will sign.

Mr. WHEAT. Mr. Speaker, I yield all time remaining on the side to the distinguished Speaker of the House of Representatives, the gentleman from Washington [Mr. FOLEY].

□ 1420

Mr. FOLEY. Mr. Speaker, it is not often that I take the well. In the tradition of those who have held the office of Speaker, I reserve that to exceptional times and circumstances. I think this is such a time.

The struggle to enact civil rights legislation in 1991 has engaged us for a very long time, and it is finally on the brink of happening in a historic moment when the President and majorities of the Congress may be able to come together to advance the interests of working men and women, to keep all people from suffering employment discrimination arising from their race, religious beliefs, background, or gender.

It is not a perfect bill. I am deeply aware of the fact that many Members that it has serious flaws of omission as well as other flaws that may need correction. I would say to them that the only possibility of making those corrections is if this bill becomes law. Indeed without the passage of a civil rights bill the additional matters can never be expected to be solved alone.

I would hope that all Members would see this opportunity as a historic one and as the basis for further improvements in the protections and assurances that we wish to advance today.

I urge the Members to vote both for this rule and the underlying legislation, and give you my assurance that I will cooperate with the distinguished Republican leader in addressing those cases involving State legislatures and the executive branch that justify correction. I would also say to the Members on this side of the aisle who are concerned with the Wards Cove case in particular that I will cooperate with them in advancing legislation to place that issue squarely before this Chamber and the other body, and I will exercise every effort on my part to see that this matter is corrected.

I plead with all the Members not to lose the opportunity that this bill presents us in so many exceptional ways to tell all our citizens that we stand for them in insisting on respect for their backgrounds and circumstances and on their being treated equally and fairly. Let us not miss this opportunity to demonstrate to the rest of the world that in this country that has, long championed the cause of personal, human, and economic rights, our traditions are with us and we will continue to advance them not only for the benefit of our citizens but so our example can resonate in other areas of the world.

Mr. Speaker, let us pass this rule. Then let us pass this bill.

Mr. MORAN. Mr. Speaker, most of the people in this country don't understand what this civil rights bill is all about. To most people this issue is an abstraction. Our debate today, and over the past 2 years, has unfortunately broken down into an obtuse argument of legal abstractions which few laymen or women understand. While nobody will deny that they support the concept of civil rights, and real progress in this field has always required a passionate response to a clear injustice.

Because of the conservative extremism reflected by a majority of the Supreme Court in a few civil rights cases adjudicated over the last decade, there are serious cases of discrimination which are being addressed, and should be addressed, by this legislation. One of the most egregious of these injustices, however, is not being addressed, even though it was one of the original reasons for this civil rights bill. The Wards Cove Packing Co. is specifically exempted from this legislation because of a high cost lobbying effort and a political deal cut in the Senate.

The Wards Cove salmon packing plant is a throwback to the plantation society of old. Asian-American employees are segregated from white managers in separate work quarters, dining facilities, and sleeping quarters. Bigotry and prejudice pervades the company where sleeping quarters are called flip-bunk houses while machinery used to cut off the heads of fish is called an iron clink. This operation is so overtly discriminatory that Wards Cove Packing Co. versus Atonio disparate impact case has become one of the pillars of today's legislation. It is inexcusable for us to proclaim ourselves as champions of civil rights and to debate the impact of this case while exempting the actual offender from the provisions of this Civil Rights Act.

Mr. Speaker, I remain a strong supporter of civil rights and of the efforts to pass this important legislation today. I am upset, however, to see such an overtly parochial issue such as amendment 22(b) taint the progress this Congress has made in fighting real discrimination.

Ms. SNOWE. Mr. Speaker, I am opposed to the rule covering debate on S. 1745, the Civil Rights Act.

I have been a strong supporter and cosponsor of the Civil Rights Act of 1991. I was an original cosponsor in the 101st and 102d Congress. I supported passage of the civil rights bill earlier this year. But I cannot vote for this rule because it maintains the unacceptable House practice of exempting this body from the laws it passes.

I worked with members of the Republican leadership task force on congressional reform to produce an amendment, offered at the Rules Committee by the gentleman from Illinois [Mr. HYDE], to extend the right of judicial review to all House employees. The Hyde amendment would have allowed House employees who are not satisfied with the final decision of the Fair Employment Practices Office to petition for review by the U.S. Court of Appeals.

It seems to me that if we expect the employers in our districts to treat their employees according to the laws we have written or face the consequences, we should be ready and willing to do the same.

The fact that the Rules Committee refused to let this amendment even be considered by the full House is inexplicable. It is particularly so since this proposed amendment didn't even address House employees coverage under

such laws as the Americans with Disabilities Act, the Equal Employment Act, and the Age Discrimination in Employment Act.

I support passage of the Civil Rights Act of 1991 but I must vote against this rule because it is unforgivable that the Republicans are not being allowed to offer an amendment to apply the protections of the Civil Rights Act to our own staffs.

The SPEAKER pro tempore (Mr. MONTGOMERY). All time has expired.

Mr. WHEAT. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 327, nays 93, not voting 12, as follows:

[Roll No. 385]

YEAS—327

Ackerman	Dickinson	Henry
Alexander	Dicks	Hertel
Andrews (ME)	Dingell	Hoagland
Andrews (NJ)	Dixon	Hobson
Andrews (TX)	Donnelly	Hochbrueckner
Annunzio	Dooley	Horn
Applegate	Dorgan (ND)	Horton
Aspin	Downey	Houghton
Atkins	Duncan	Hoyer
AuCoin	Durbin	Hubbard
Bacchus	Dwyer	Huckaby
Barnard	Dymally	Hughes
Barrett	Eckart	Hunter
Barton	Edwards (CA)	Hutto
Beilenson	Edwards (OK)	Hyde
Bereuter	Edwards (TX)	Ireland
Bevill	Emerson	Jacobs
Bilbray	Engel	James
Bilirakis	English	Jefferson
Boehlert	Erdreich	Jenkins
Bonior	Espy	Johnson (CT)
Borski	Ewing	Johnson (SD)
Boucher	Fascell	Johnson (TX)
Brewster	Fawell	Johnston
Brooks	Fazio	Jones (GA)
Broomfield	Feighan	Jones (NC)
Browder	Fish	Jontz
Brown	Flake	Kanjorski
Bruce	Ford (MI)	Kaptur
Bustamante	Ford (TN)	Kasich
Byron	Frank (MA)	Kennedy
Camp	Franks (CT)	Kennelly
Campbell (CA)	Frost	Kildee
Campbell (CO)	Gallegly	Kleczka
Cardin	Gallo	Kolbe
Carper	Gaydos	Kolter
Carr	Gejdenson	Kopetski
Chandler	Gekas	Kostmayer
Chapman	Gephardt	LaFalce
Clay	Geren	Lagomarsino
Clement	Gibbons	Lancaster
Clinger	Gilchrest	Lantos
Coleman (MO)	Gillmor	LaRocco
Collins (IL)	Gilman	Laughlin
Collins (MI)	Gingrich	Leach
Condit	Glickman	Lehman (CA)
Cooper	Goodling	Lehman (FL)
Costello	Gordon	Lent
Coughlin	Grandy	Levin (MI)
Cox (IL)	Green	Lewis (GA)
Coyne	Guarini	Lightfoot
Cramer	Gunderson	Lloyd
Cunningham	Hall (OH)	Long
Darden	Hamilton	Lowery (CA)
Davis	Hansen	Lowey (NY)
de la Garza	Harris	Luken
DeFazio	Hatcher	Machtley
DeLauro	Hayes (IL)	Manton
Derrick	Hefner	Markey
Martinez	Petri	Smith (NJ)
Mavroules	Pickett	Smith (OR)
Mazzoli	Pickle	Smith (TX)
McCloskey	Porter	Solarz
McCollum	Poshard	Spratt
McCrery	Price	Staggers
McCurdy	Pursell	Stallings
McDade	Quillen	Stark
McGrath	Rahall	Stenholm
McHugh	Ramstad	Stokes
McMillan (NC)	Rangel	Studds
McNulty	Ravenel	Sundquist
Meyers	Ray	Swett
Mfume	Reed	Swift
Michel	Regula	Synar
Miller (OH)	Rhodes	Tallon
Miller (WA)	Richardson	Tanner
Moakley	Ridge	Tauzin
Mollohan	Rinaldo	Taylor (MS)
Montgomery	Ritter	Thomas (GA)
Moorhead	Roe	Thomas (WY)
Morrison	Roemer	Thornton
Mrazek	Ros-Lehtinen	Torres
Murphy	Rose	Torricelli
Murtha	Rostenkowski	Towns
Myers	Roth	Traficant
Natcher	Roukema	Traxler
Neal (MA)	Rowland	Unsoeld
Neal (NC)	Roybal	Vento
Nowak	Russo	Visclosky
Nussle	Sabo	Volkmer
Obey	Sanders	Vucanovich
Olver	Sarpalius	Walker
Ortiz	Sawyer	Walsh
Orton	Saxton	Waters
Owens (NY)	Scheuer	Weber
Owens (UT)	Schiff	Weldon
Oxley	Schulze	Wheat
Pallone	Schumer	Whitten
Panetta	Serrano	Williams
Parker	Sharp	Wilson
Pastor	Shaw	Wise
Patterson	Shays	Wolf
Payne (VA)	Sisisky	Wolpe
Pease	Skaggs	Wyden
Pelosi	Skeen	Wylie
Penny	Skelton	Yates
Perkins	Slattery	Yatron
Peterson (FL)	Slaughter (NY)	Young (AK)
Peterson (MN)	Smith (IA)	Young (FL)

NAYS—93

Abercrombie	Fields	Nagle
Allard	Foglietta	Nichols
Anderson	Gonzalez	Oakar
Archer	Goss	Packard
Armey	Hall (TX)	Paxon
Baker	Hammerschmidt	Payne (NJ)
Ballenger	Hancock	Riggs
Bateman	Hastert	Roberts
Bennett	Hefley	Rogers
Bentley	Herger	Rohrabacher
Berman	Holloway	Santorum
Bliley	Inhofe	Savage
Boehner	Klug	Schaefer
Bryant	Kyl	Schroeder
Bunning	Lewis (CA)	Sensenbrenner
Burton	Lewis (FL)	Shuster
Callahan	Lipinski	Sikorski
Coble	Livingston	Snowe
Coleman (TX)	Marlenee	Solomon
Combest	Martin	Spence
Conyers	Matsui	Stearns
Cox (CA)	McCandless	Stump
Crane	McDermott	Taylor (NC)
Dannemeyer	McMillen (MD)	Thomas (CA)
DeLay	Miller (CA)	Upton
Dellums	Mineta	Valentine
Doolittle	Mink	Vander Jagt
Dornan (CA)	Molinari	Washington
Dreier	Moody	Waxman
Early	Moran	Zeliff
Evans	Morella	Zimmer

NOT VOTING—12

Anthony	Hopkins	Olin
Boxer	Levine (CA)	Sangmeister
Gradison	McEwen	Smith (FL)
Hayes (LA)	Oberstar	Weiss

□ 1443

Messrs. DELLUMS, BATEMAN, GONZALEZ, and WAXMAN changed their vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. BROOKS. Pursuant to the provisions of House Resolution 270, I call up the Senate bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The text of S. 1745 is as follows:

S. 1745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

SEC. 101. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.".

SEC. 102. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e–2 or 2000e–3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT.—In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 or regulations implementing section 501 of the Rehabilitation Act of 1973, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.—

"(1) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.—Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

"(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

"(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.—If a complaining party seeks compensatory or punitive damages under this section—

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(d) DEFINITIONS.—As used in this section:

"(1) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), the Equal Employment Opportunity Commission, the Attorney General, a person who may bring an action or proceeding under section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(2) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice' means the discrimination described in paragraph (1), or the discrimination or the violation described in paragraph (2), of subsection (a).

SEC. 103. ATTORNEY'S FEES.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting ", 1977A" after "1977".

SEC. 104. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 717.".

SEC. 105. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

(a) Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

"(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

"(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

"(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative employment practice'.

"(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

(b) No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act that relates to Wards Cove—Business necessity/cumulation/alternative business practice.

SEC. 106. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by section 105) is further amended by adding at the end the following new subsection:

"(l) It shall be an unlawful employment practice for a respondent, in connection with

the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.".

SEC. 107. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by sections 105 and 106) is further amended by adding at the end the following new subsection:

"(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e–5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A) and indenting accordingly; and

(3) by adding at the end the following new subparagraph:

"(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m); and

"(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).".

SEC. 108. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by sections 105, 106, and 107 of this title) is further amended by adding at the end the following new subsection:

"(n)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

"(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

"(II) a reasonable opportunity to present objections to such judgment or order; or

"(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

"(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

"(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 109. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) are each amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.".

(b) EXEMPTION.—

(1) CIVIL RIGHTS ACT OF 1964.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) is amended—

(A) by inserting "(a)" after "SEC. 702."; and

(B) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control,

of the employer and the corporation.".

(2) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) COVERED ENTITIES IN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

"(2) CONTROL OF CORPORATION.—

"(A) PRESUMPTION.—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(B) EXCEPTION.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(C) DETERMINATION.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control,

of the employer and the corporation.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 110. TECHNICAL ASSISTANCE TRAINING INSTITUTE.

(a) TECHNICAL ASSISTANCE.—Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4) is amended by adding at the end the following new subsection:

"(j)(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

"(2) An employer or other entity covered under this title shall not be excused from compliance with the requirements of this title because of any failure to receive technical assistance under this subsection.

"(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 111. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraph:

"(2) In exercising its powers under this title, the Commission shall carry out educational and outreach activities (including

dissemination of information in languages other than English) targeted to—

"(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

"(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this title or such law, as the case may be.".

SEC. 112. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.".

SEC. 113. AUTHORIZING AWARD OF EXPERT FEES.

(a) REVISED STATUTES.—Section 722 of the Revised Statutes is amended—

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

"(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of sections 1977 or 1977A of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney's fee.".

(b) CIVIL RIGHTS ACT OF 1964.—Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 114. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.".

SEC. 115. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking paragraph (2);

(2) by striking the paragraph designation in paragraph (1);

(3) by striking "Sections 6 and" and inserting "Section"; and

(4) by adding at the end the following:

"If a charge filed with the Commission under this Act is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) against the respondent named in the charge within 90 days after the date of the receipt of such notice.".

SEC. 116. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this title shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

SEC. 117. COVERAGE OF HOUSE OF REPRESENTATIVES AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(b) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this title and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 301(c)(1).

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII for the Civil Rights Act of 1964 (42 U.S.C. 2000e–16).

SEC. 118. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

TITLE II—GLASS CEILING

SEC. 201. SHORT TITLE.

This title may be cited as the "Glass Ceiling Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" undertaken by the Department of Labor, including the release of the report entitled "Report on the Glass Ceiling Initiative", has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the management and decisionmaking levels in the United States work force;

(B) the underrepresentation of women and minorities in line functions in the United States work force;

(C) the lack of access for qualified women and minorities to credential-building developmental opportunities; and

(D) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which management and decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to management and decisionmaking positions; and

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities.

(b) PURPOSE.—The purpose of this title is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills management and decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

SEC. 203. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this title as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to management and decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, including—

(A) six individuals appointed by the President;

(B) six individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold management or decisionmaking positions in corporations or other business entities recognized as leaders on issues relating to equal employment opportunity; and

(C) possess academic expertise or other recognized ability regarding employment issues.

(3) BALANCE.—In making the appointments under subparagraphs (A) and (B) of paragraph (1), each appointing authority shall seek to include an appropriate balance of appointees from among the groups of appointees described in subparagraphs (A), (B), and (C) of paragraph (2).

(c) CHAIRPERSON.—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) TERM OF OFFICE.—Members shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code; and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 204. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO MANAGEMENT AND DECISIONMAKING POSITIONS IN BUSINESS.

(a) ADVANCEMENT STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to management and decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to management and decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which management and decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to management and decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to management and decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to management and decisionmaking positions in business.

(b) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the management and decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume management and decisionmaking positions;

(C) compensation programs and reward structures utilized to reward and retain key employees; and

(D) the use of enforcement (including such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(c) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to management and decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 205. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) IN GENERAL.—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "Frances Perkins-Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to

foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to management and decisionmaking positions.

(d) BUSINESS.—For the purposes of this section, the term "business" includes—

(1)(A) a corporation, including nonprofit corporations;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in subparagraphs (A) through (D);

(2) an education referral program, a training program, such as an apprenticeship or management training program or a similar program; and

(3) a joint program formed by a combination of any entities discribed in paragraph 1 or 2.

SEC. 206. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

(a) INDIVIDUAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 204 and 205, the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 208. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) TECHNICAL ASSISTANCE.—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title. The sums shall remain available until expended, without fiscal year limitation.

SEC. 210. TERMINATION.

(a) COMMISSION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

(b) AWARD.—The authority to make awards under section 205 shall terminate 4 years after the date of the enactment of this Act.

TITLE III—GOVERNMENT EMPLOYEE RIGHTS

SEC. 301. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) SHORT TITLE.—This title may be cited as the "Government Employee Rights Act of 1991".

(b) PURPOSE.—The purpose of this title is to provide procedures to protect the right of Senate and other government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) DEFINITIONS.—For purposes of this title:

(1) SENATE EMPLOYEE.—The term "Senate employee" or "employee" means—

(A) any employee whose pay is disbursed by the Secretary of the Senate;

(B) any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;

(C) any applicant for a position that will last 90 days or more and that is to be occupied by an individual described in subparagraph (A) or (B); or

(D) any individual who was formerly an employee described in subparagraph (A) or (B) and whose claim of a violation arises out of the individual's Senate employment.

(2) HEAD OF EMPLOYING OFFICE.—The term "head of employing office" means the individual who has final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the Senate employment of an employee.

(3) VIOLATION.—The term "violation" means a practice that violates section 302 of this title.

SEC. 302. DISCRIMINATORY PRACTICES PROHIBITED.

All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102–104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–14).

SEC. 303. ESTABLISHMENT OF OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES.

(a) IN GENERAL.—There is established, as an office of the Senate, the Office of Senate Fair Employment Practices (referred to in this title as the "Office"), which shall—

(1) administer the processes set forth in sections 305 through 307;

(2) implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader. The appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. The Director shall be appointed for a term of

service which shall expire at the end of the Congress following the Congress during which the Director is appointed. A Director may be reappointed at the termination of any term of service. The President pro tempore, upon the joint recommendation of the Majority Leader in consultation with the Minority Leader, may remove the Director at any time.

(2) SALARY.—The President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader, shall establish the rate of pay for the Director. The salary of the Director may not be reduced during the employment of the Director and shall be increased at the same time and in the same manner as fixed statutory salary rates within the Senate are adjusted as a result of annual comparability increases.

(3) ANNUAL BUDGET.—The Director shall submit an annual budget request for the Office to the Committee on Appropriations.

(4) APPOINTMENT OF DIRECTOR.—The first Director shall be appointed and begin service within 90 days after the date of enactment of this Act, and thereafter the Director shall be appointed and begin service within 30 days after the beginning of the session of the Congress immediately following the termination of a Director's term of service or within 60 days after a vacancy occurs in the position.

(c) STAFF OF THE OFFICE.—

(1) APPOINTMENT.—The Director may appoint and fix the compensation of such additional staff, including hearing officers, as are necessary to carry out the purposes of this title.

(2) DETAILEES.—The Director may, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, use on a reimbursable or nonreimbursable basis the services of any such department or agency, including the services of members or personnel of the General Accounting Office Personnel Appeals Board.

(3) CONSULTANTS.—In carrying out the functions of the Office, the Director may procure the temporary (not to exceed 1 year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) EXPENSES OF THE OFFICE.—In fiscal year 1992, the expenses of the Office shall be paid out of the Contingent Fund of the Senate from the appropriation account Miscellaneous Items. Beginning in fiscal year 1993, and for each fiscal year thereafter, there is authorized to be appropriated for the expenses of the Office such sums as shall be necessary to carry out its functions. In all cases, expenses shall be paid out of the Contingent Fund of the Senate upon vouchers approved by the Director, except that a voucher shall not be required for—

(1) the disbursement of salaries of employees who are paid at an annual rate;

(2) the payment of expenses for telecommunications services provided by the Telecommunications Department, Sergeant at Arms, United States Senate;

(3) the payment of expenses for stationery supplies purchased through the Keeper of the Stationery, United States Senate;

(4) the payment of expenses for postage to the Postmaster, United States Senate; and

(5) the payment of metered charges on copying equipment provided by the Sergeant at Arms, United States Senate.

The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out this title. Expenses of the Office shall include authorized travel for personnel of the Office.

(e) RULES OF THE OFFICE.—The Director shall adopt rules governing the procedures of the Office, including the procedures of hearing boards, which rules shall be submitted to the President pro tempore for publication in the Congressional Record. The rules may be amended in the same manner. The Director may consult with the Chairman of the Administrative Conference of the United States on the adoption of rules.

(f) REPRESENTATION BY THE SENATE LEGAL COUNSEL.—For the purpose of representation by the Senate Legal Counsel, the Office shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978 (2 U.S.C. 288, et seq.).

SEC. 304. SENATE PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The Senate procedure for consideration of alleged violations consists of 4 steps as follows:

(1) Step I, counseling, as set forth in section 305.

(2) Step II, mediation, as set forth in section 306.

(3) Step III, formal complaint and hearing by a hearing board, as set forth in section 307.

(4) Step IV, review of a hearing board decision, as set forth in section 308 or 309.

SEC. 305. STEP I: COUNSELING.

(a) IN GENERAL.—A Senate employee alleging a violation may request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the alleged violation forming the basis of the request for counseling occurred. No request for counseling may be made until 10 days after the first Director begins service pursuant to section 303(b)(4).

(b) PERIOD OF COUNSELING.—The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

(c) EMPLOYEES OF THE ARCHITECT OF THE CAPITOL AND CAPITOL POLICE.—In the case of an employee of the Architect of the Capitol or an employee who is a member of the Capitol Police, the Director may refer the employee to the Architect of the Capitol or the Capitol Police Board for resolution of the employee's complaint through the internal grievance procedures of the Architect of the Capitol or the Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.

SEC. 306. STEP II: MEDIATION.

(a) IN GENERAL.—Not later than 15 days after the end of the counseling period, the employee may file a request for mediation with the Office. Mediation may include the Office, the employee, and the employing office in a process involving meetings with the parties separately or jointly for the purpose of resolving the dispute between the employee and the employing office.

(b) MEDIATION PERIOD.—The mediation period shall be 30 days beginning on the date the request for mediation is received and may be extended for an additional 30 days at the discretion of the Office. The Office shall notify the employee and the head of the employing office when the mediation period has ended.

SEC. 307. STEP III: FORMAL COMPLAINT AND HEARING.

(a) FORMAL COMPLAINT AND REQUEST FOR HEARING.—Not later than 30 days after receipt by the employee of notice from the Office of the end of the mediation period, the Senate employee may file a formal complaint with the Office. No complaint may be filed unless the employee has made a timely request for counseling and has completed the procedures set forth in sections 305 and 306.

(b) HEARING BOARD.—A board of 3 independent hearing officers (referred to in this title as "hearing board"), who are not Senators or officers or employees of the Senate, chosen by the Director (one of whom shall be designated by the Director as the presiding hearing officer) shall be assigned to consider each complaint filed under this section. The Director shall appoint hearing officers after considering any candidates who are recommended to the Director by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters. A hearing board shall act by majority vote.

(c) DISMISSAL OF FRIVOLOUS CLAIMS.—Prior to a hearing under subsection (d), a hearing board may dismiss any claim that it finds to be frivolous.

(d) HEARING.—A hearing shall be conducted—

(1) in closed session on the record by a hearing board;

(2) no later than 30 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 60 days the time for conducting a hearing; and

(3) except as specifically provided in this title and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code.

(e) DISCOVERY.—Reasonable prehearing discovery may be permitted at the discretion of the hearing board.

(f) SUBPOENA.—

(1) AUTHORIZATION.—A hearing board may authorize subpoenas, which shall be issued by the presiding hearing officer on behalf of the hearing board, for the attendance of witnesses at proceedings of the hearing board and for the production of correspondence, books, papers, documents, and other records.

(2) OBJECTIONS.—If a witness refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with the proceedings of a hearing board, the hearing board shall rule on the objection. At the request of the witness, the employee, or employing office, or on its own initiative, the hearing board may refer the objection to the Select Committee on Ethics for a ruling.

(3) ENFORCEMENT.—The Select Committee on Ethics may make to the Senate any recommendations by report or resolution, including recommendations for criminal or civil enforcement by or on behalf of the Office, which the Select Committee on Ethics may consider appropriate with respect to—

(A) the failure or refusal of any person to appear in proceedings under this or to produce records in obedience to a subpoena or order of the hearing board; or

(B) the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under this section.

For purposes of section 1365 of title 28, United States Code, the Office shall be deemed to be a committee of the Senate.

(g) DECISION.—The hearing board shall issue a written decision as expeditiously as possible, but in no case more than 45 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the employee and the employing office. The decision shall state the issues raised by the complaint, describe the evidence in the record, and contain a determination as to whether a violation has occurred.

(h) REMEDIES.—If the hearing board determines that a violation has occurred, it shall order such remedies as would be appropriate if awarded under section 706 (g) and (k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5 (g) and (k)), and may also order the award of such compensatory damages as would be appropriate if awarded under section 1977 and section 1977A (a) and (b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981A (a) and (b)(2)). In the case of a determination that a violation based on age has occurred, the hearing board shall order such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)). Any order requiring the payment of money must be approved by a Senate resolution reported by the Committee on Rules and Administration. The hearing board shall have no authority to award punitive damages.

(i) PRECEDENT AND INTERPRETATIONS.—Hearing boards shall be guided by judicial decisions under statutes referred to in section 302 and subsection (h) of this section, as well as the precedents developed by the Select Committee on Ethics under section 308, and other Senate precedents.

SEC. 308. REVIEW BY THE SELECT COMMITTEE ON ETHICS.

(a) IN GENERAL.—An employee or the head of an employing office may request that the Select Committee on Ethics (referred to in this section as the "Committee"), or such other entity as the Senate may designate, review a decision under section 307, including any decision following a remand under subsection (c), by filing a request for review with the Office not later than 10 days after the receipt of the decision of a hearing board. The Office, at the discretion of the Director, on its own initiative and for good cause, may file a request for review by the Committee of a decision of a hearing board not later than 5 days after the time for the employee or employing office to file a request for review has expired. The Office shall transmit a copy of any request for review to the Committee and notify the interested parties of the filing of the request for review.

(b) REVIEW.—Review under this section shall be based on the record of the hearing board. The Committee shall adopt and publish in the Congressional Record procedures for requests for review under this section.

(c) REMAND.—Within the time for a decision under subsection (d), the Committee may remand a decision no more than one time to the hearing board for the purpose of supplementing the record or for further consideration.

(d) FINAL DECISION.—

(1) HEARING BOARD.—If no timely request for review is filed under subsection (a), the Office shall enter as a final decision, the decision of the hearing board.

(2) SELECT COMMITTEE ON ETHICS.—

(A) If the Committee does not remand under subsection (c), it shall transmit a written final decision to the Office for entry in the records of the Office. The Committee shall transmit the decision not later than 60 calendar days during which the Senate is in session after the filing of a request for review under subsection (a). The Committee may extend for 15 calendar days during which the Senate is in session the period for transmission to the Office of a final decision.

(B) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, unless a majority of the Committee votes to reverse or remand the decision of the hearing board within the time for transmission to the Office of a final decision.

(C) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, if the Committee, in its discretion, decides not to review, pursuant to a request for review under subsection (a), a decision of the hearing board, and notifies the interested parties of such decision.

(3) ENTRY OF A FINAL DECISION.—The entry of a final decision in the records of the Office shall constitute a final decision for purposes of judicial review under section 309.

(e) STATEMENT OF REASONS.—Any decision of the Committee under subsection (c) or subsection (d)(2)(A) shall contain a written statement of the reasons for the Committee's decision.

SEC. 309. JUDICIAL REVIEW.

(a) IN GENERAL.—Any Senate employee aggrieved by a final decision under section 308(d), or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 308(d)(2)(B), may petition for review by the United States Court of Appeals for the Federal Circuit.

(b) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that—

(1) with respect to section 2344 of title 28, United States Code, service of the petition shall be on the Senate Legal Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, United States Code, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 308(d);

(4) the Office shall be an "agency" as that term is used in chapter 158 of title 28, United States Code; and

(5) the Office shall be the respondent in any proceeding under this section.

(c) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. The record on review shall include the record before the hearing board, the decision of the hearing board, and the decision, if any, of the Select Committee on Ethics.

(d) ATTORNEY'S FEES.—If an employee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

SEC. 310. RESOLUTION OF COMPLAINT.

If, after a formal complaint is filed under section 307, the employee and the head of the employing office resolve the issues involved, the employee may dismiss the complaint or the parties may enter into a written agreement, subject to the approval of the Director.

SEC. 311. COSTS OF ATTENDING HEARINGS.

Subject to the approval of the Director, an employee with respect to whom a hearing is held under this title may be reimbursed for actual and reasonable costs of attending proceedings under sections 307 and 308, consistent with Senate travel regulations. Senate Resolution 259, agreed to August 5, 1987 (100th Congress, 1st Session), shall apply to witnesses appearing in proceedings before a hearing board.

SEC. 312. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any employee by any Member, officer, or employee of the Senate, or by the Architect of the Capitol, or anyone employed by the Architect of the Capitol, as the case may be, because of the exercise of a right under this title constitutes an unlawful employment practice, which may be remedied in the same manner under this title as is a violation.

SEC. 313. CONFIDENTIALITY.

(a) COUNSELING.—All counseling shall be strictly confidential except that the Office and the employee may agree to notify the head of the employing office of the allegations.

(b) MEDIATION.—All mediation shall be strictly confidential.

(c) HEARINGS.—Except as provided in subsection (d), the hearings, deliberations, and decisions of the hearing board and the Select Committee on Ethics shall be confidential.

(d) FINAL DECISION OF SELECT COMMITTEE ON ETHICS.—The final decision of the Select Committee on Ethics under section 308 shall be made public if the decision is in favor of the complaining Senate employee or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee on Ethics may decide to release any other decision at its discretion. In the absence of a proceeding under section 308, a decision of the hearing board that is favorable to the employee shall be made public.

(e) RELEASE OF RECORDS FOR JUDICIAL REVIEW.—The records and decisions of hearing boards, and the decisions of the Select Committee on Ethics, may be made public if required for the purpose of judicial review under section 309.

SEC. 314. EXERCISE OF RULEMAKING POWER.

The provisions of this title, except for sections 309, 320, 321, and 322, are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. Notwithstanding any other provision of law, except as provided in section 309, enforcement and adjudication with respect to the discriminatory practices prohibited by section 302, and arising out of Senate employment, shall be within the exclusive jurisdiction of the United States Senate.

SEC. 315. TECHNICAL AND CONFORMING AMENDMENTS.

Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) through (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (2) and (3), respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking "(2) and (6)(A)" and inserting "(2)(A)", as redesignated by subparagraph (B) of this paragraph; and

(ii) by striking "(3), (4), (5), (6)(B), and (6)(C)" and inserting "(2)"; and

(2) in subsection (c)(2), by inserting ", except for the employees who are defined as Senate employees, in section 301(c)(1) of the Civil Rights Act of 1991" after "shall apply exclusively".

SEC. 316. POLITICAL AFFILIATION AND PLACE OF RESIDENCE.

(a) IN GENERAL.—It shall not be a violation with respect to an employee described in subsection (b) to consider the—

(1) party affiliation;

(2) domicile; or

(3) political compatibility with the employing office,

of such an employee with respect to employment decisions.

(b) DEFINITION.—For purposes of this section, the term "employee" means—

(1) an employee on the staff of the Senate leadership;

(2) an employee on the staff of a committee or subcommittee;

(3) an employee on the staff of a Member of the Senate;

(4) an officer or employee of the Senate elected by the Senate or appointed by a Member, other than those described in paragraphs (1) through (3); or

(5) an applicant for a position that is to be occupied by an individual described in paragraphs (1) through (4).

SEC. 317. OTHER REVIEW.

No Senate employee may commence a judicial proceeding to redress discriminatory practices prohibited under section 302 of this title, except as provided in this title.

SEC. 318. OTHER INSTRUMENTALITIES OF THE CONGRESS.

It is the sense of the Senate that legislation should be enacted to provide the same or comparable rights and remedies as are provided under this title to employees of instrumentalities of the Congress not provided with such rights and remedies.

SEC. 319. RULE XLII OF THE STANDING RULES OF THE SENATE.

(a) REAFFIRMATION.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(b) AUTHORITY TO DISCIPLINE.—Notwithstanding any provision of this title, including any provision authorizing orders for remedies to Senate employees to redress employment discrimination, the Select Committee on Ethics shall retain full power, in accordance with its authority under Senate Resolution 338, 88th Congress, as amended, with respect to disciplinary action against a Member, officer, or employee of the Senate for a violation of Rule XLII.

SEC. 320. COVERAGE OF PRESIDENTIAL APPOINTEES.

(a) IN GENERAL.—

(1) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any Presidential appointee may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(ii) not made consistent with required procedures; or

(iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) ATTORNEY'S FEES.—If the presidential appointee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(b) PRESIDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 302 but does not include any individual—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or

(3) who is a member of the uniformed services.

SEC. 321. COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES.

(a) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) ENFORCEMENT BY ADMINISTRATIVE ACTION.—

(1) IN GENERAL.—Any individual referred to in subsection (a) may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) REFERRAL TO STATE AND LOCAL AUTHORITIES.—

(A) APPLICATION.—Section 706(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(d)) shall apply with respect to any proceeding under this section.

(B) DEFINITION.—For purposes of the application described in subparagraph (A), the term "any charge filed by a member of the Commission alleging an unlawful employment practice" means a complaint filed under this section.

(c) JUDICIAL REVIEW.—Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(d) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) ATTORNEY'S FEES.—If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

SEC. 322. SEVERABILITY.

Notwithstanding section 401 of this Act, if any provision of section 309 or 320(a)(3) is invalidated, both sections 309 and 320(a)(3) shall have no force and effect.

SEC. 323. PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal ac-

count for any payment made on his or her behalf out of such account for a violation committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

SEC. 324. REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this section are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

SEC. 325. INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 309 and section 320, any Member of the Senate may intervene as a matter of right in any proceeding under section 309 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 309 or section 320, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may by taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 309 or 320.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

TITLE IV—GENERAL PROVISIONS

SEC. 401. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 402. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

(b) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

TITLE V—CIVIL WAR SITES ADVISORY COMMISSION

SEC. 501. CIVIL WAR SITES ADVISORY COMMISSION.

Section 1205 of Public Law 101-628 is amended in subsection (a) by—

(1) striking "Three" in paragraph (4) and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

The SPEAKER pro tempore (Mr. MFUME). Pursuant to the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 15 minutes; the gentleman from Illinois [Mr. HYDE] will be recognized for 15 minutes; the gentleman from Michigan [Mr. FORD] will be recognized for 15 minutes, and the gentleman from Pennsylvania [Mr. GOODLING] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself and such time as I may consume.

Mr. Speaker, I hope that today we are writing the final chapter in a legislative saga that, unhappily, has lasted more than 2 years. Through both the 101st and 102d Congresses, the legislative branch has worked diligently and in good faith to craft legislation that would restore and reaffirm our Nation's historic—and almost unique—commitment to equal treatment for all our citizens in the workplace. Why did the vast majority of this body join in that effort? Simply because civil rights is a central part of the American experience, representing as it does our most visible reaffirmation of the Bill of Rights.

I believe that the legislation before us, S. 1745, remains true to that commitment. Its enactment will assure that all people will be able to compete for jobs on the basis of merit and merit alone. Such a simple and life-affirming goal—but one that has almost become lost in a tangled story of posturing and election year prepositioning.

History is often instructive, and some facts bear repeating. As the Members well know, on the first day of this Congress, I introduced H.R. 1, the Civil Rights Act of 1991. I was proud to guide H.R. 1 through the legislative process in this body, even as I and all around me heard a remarkable litany of allegations that drew upon the most perverse logic imaginable that H.R. 1 would somehow force employers to resort to quotas in their hiring.

How this would occur was of course never specified, but the political potency of the word "quota"—much like the shout of "fire" in a crowded room—has a dynamic all its own. As legislators—and even the supposedly impartial press—ran to the exits, they barely noticed that not a single spark of combustion was in the room. The political firestorm could have been put out by simply reading the bill.

Nevertheless, over the months the ploy continued to work, to the disgrace of many who were unwittingly cast in supporting roles not of their own choosing. What has changed today between H.R. 1 and S. 1745 that has suddenly and magically transformed a quota bill into a gleaming piece of civil rights legislation that the President can't wait to sign?

At the heart of H.R. 1 was the imperative to overrule a series of Supreme Court decisions that had severely damaged equal employment law. S. 1745 addresses essentially the same cases. H.R. 1 required an employer to show that alleged discriminatory practices were "required by business necessity"—further, that they bear "a significant and manifest relationship to the requirements for effective job performance." One runs the risk of straining English usage to say that S. 1745 changes this test by requiring the respondent to demonstrate that the practice is "job-related for the position in question and consistent with business necessity." I ask my colleagues: Did that change in nuance kill the quota monster?

H.R. 1 permitted the complainant to challenge a group of employment practices, and required the complainant to make diligent effort during discovery to determine the particular practices that resulted in a disparate impact. S. 1745, on the other hand, requires a complainant to challenge a particular employment practice unless the elements of the employer's decisionmaking process cannot be separated. Is this the change that made believers of the President's men?

Mr. Speaker, the argument was made that under H.R. 1 employers would resort to quotas in order to avoid the potential of litigation and threatened damages. H.R. 1 provided a cap for punitive damages of $150,000 or an amount equal to the sum of compensatory damages and equitable monetary relief. S. 1745 replaced this provision with a four-tier compensatory and punitive damages structure based on the number of employees. And yet, we mustn't forget that when a company has less than 15 employees, there are no damages available whatsoever because there is no cause of action under our current anti-discrimination statutes. Moreover, over 80 percent of the businesses in this county fall within the category of the exemption. Where, I ask the Members, was the quota lurking in H.R. 1; and where; I ask, has the quota now gone, given the Senate's even larger damage awards?

There is a strange irony in one of the changes in language that was made between H.R. 1 and S. 1745. As passed by the House, H.R. 1 directly and explicitly prohibited the use of quotas. S. 1745 does not include this language. It has still not been explained to me or the American people why removing an expressed prohibition on quotas makes the bill before us today less of a quota bill. But again, I have not been the master of the perverse logic that has propelled the strategy on the other side.

Mr. Speaker, the plain and simple fact is that in its essence and in all but the most technical of areas, the bill before us today embodies the bill that we passed 5 months ago and that would be

law today except for the loud, hectoring veto threat that we heard from the West Wing of the White House. In the broadest of terms, virtually nothing of substance has changed H.R. 1 and S. 1745.

I will not dwell on speculation about what has changed over the past several months, or whether the rise of blatant racist appeals in recent gubernatorial political campaigns have brought us to this point today where we all now desperately wish to appear to be reasonable and compassionate men and women. I do know this, however: The debate and rhetoric over this legislation has unleashed political forces that could be profoundly and permanently damaging to our system of government. It has legitimized and made acceptable arguments that have no place in our political discourse.

I do not know whether, by moving this legislation through enactment and moving on to other issues, we can put the genie back in the bottle. But I do know that it is high time—far past the right time in fact—to close this chapter by enacting a good and just piece of legislation that will restore equity in the workplace. I urge all the Members to vote for S. 1745.

□ 1450

Mr. EDWARDS of California. Mr. Speaker, will the gentleman yield?

Mr. BROOKS. I yield to my distinguished friend, the gentleman from California, Mr. DON EDWARDS, chairman of the subcommittee.

Mr. EDWARDS of California. Mr. Speaker, I rise in enthusiastic support of this bill.

Mr. Speaker, S. 1745, the Civil Rights Act of 1991, passed by the Senate on October 30, 1991, achieves the same fundamental purposes as H.R. 1 which passed the House on June 5, 1991. Both bills, for example, restore the allocation of the burden of proof and the concept of business necessity as enunciated in *Griggs* v. *Duke Power*, 401 U.S. 424, 1971, and reject the contrary interpretations of the Wards Cove case. Both bills assure that section 1981 covers discrimination against racial and ethnic minorities on the job, and establish a damage remedy in cases of discrimination on the basis of gender and disability. Both bills limit the circumstances under which litigated judgments and consent decrees in title VII cases can be subject to collateral attack. And there are many other respects in which the two bills are very similar or virtually identical. Accordingly, the great bulk of the legislative history on H.R. 1 that was established in the course of proceedings in the House Judiciary and Education and Labor Committees and the floor debate in the House applies with equal force to S. 1745.

There are some instances, however, in which the language of S. 1745 and H.R. 1 differ, notwithstanding the similarity in purpose of the two bills. Accordingly, I offer this interpretive memorandum where questions may arise because of differences in wording between the two bills. With these clarifications I join in sponsoring S. 1745 and wholeheartedly urge Members of the House of Representatives to support the bill.

SECTION-BY-SECTION ANALYSIS

SECTION 101—PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS

Section 101 fills the gap in the broad statutory protection against intentional racial and ethnic discrimination covered by section 1981, 42 U.S.C. 1981 (Section 1977 of the Revised Statutes) that was created by the Supreme Court decision in *Patterson* v. *McLean Credit Union*, 491 U.S. 164 (1989). Section 101 reinstates the prohibition of discrimination during the performance of the contract and restores protection for racial and ethnic discrimination to the millions of individuals employed by firms with fewer than 15 employees. The list set forth in subsection (b) is illustrative only, and should be given broad construction to allow a remedy for any act of intentional discrimination committed in the making or the performance of a contract. Section 101 also overturns Patterson in contractual relationships other than employment, and nothing in the amended language should be construed to limit it to the employment context.

Section 101 also codifies the holding of *Runyon* v. *McCrary*, 427 U.S. 160 (1976), reaffirmed in Patterson, that section 1981 prohibits private, as well as governmental discrimination.

SECTION 102—DAMAGES

The creation of a damages remedy for intentional discrimination is necessary to conform remedies for intentional gender, disability, and certain forms of religious discrimination to those currently available to victims of intentional race, national origin and other forms of religious discrimination as well as to provide a more effective damages remedy in the public sector. This legislation properly reverses the Supreme Court's decision in *Patterson* v. *McLean Credit Union*, 491 U.S. 164 (1989) to assure that the broad prohibition against race and ethnic discrimination included in 42 U.S.C. 1982, along with the availability of compensatory and punitive damages, is restored and applies to all aspects of the employment relationship. With Section 1981 thus restored, it is simply untenable to continue any longer the disparity in the civil rights laws which permits the recovery of compensatory and punitive damages in cases of intentional race discrimination but to deny these same remedies to victims of other forms of discrimination.

Monetary damages serve the twin purposes of compensation and deterrence. Compensatory damages are necessary to make discrimination victims whole for the terrible injury to their careers, to their mental, physical, and emotional health, to their self-respect and dignity, and for other consequential harms. Compensatory damages also raise the cost of an employer's engaging in intentional discrimination, thereby providing employers with additional incentives to prevent intentional discrimination in the workplace before it happens. Punitive damages serve the important purposes of punishing egregious discrimination, reinforcing the public policy against discrimination and adding to the deterrent value of a damages award. Monetary damages are also necessary to encourage citizens to act as private attorneys general to enforce the law.

Section 102 creates a new provision, section 1977A of the revised statutes, to be codified as section 1981A in Title 42 of the United States Code. Section 1977A authorizes the award of compensatory damages in cases of intentional employment discrimination against persons within the protected categories of Title VII and the Americans with Disabilities Act.

The provisions of Section 1977 (42 U.S.C. 1981) and Section 1977A work together. Some victims of discrimination such as those suffering solely from sex or disability discrimination will have recourse under Section 1977A. Others, such as those suffering from racial or national origin discrimination have recourse under both Sections 1977 and 1977A. While these plaintiffs may proceed under both sections, they, of course, cannot recover double damages for the same harm arising out of the same facts and circumstances.

Other plaintiffs who have recourse under both Sections 1977 and 1977A include those who suffer from double discrimination on the basis of disability or sex combined with race or national origin. These plaintiffs, who may have different independent causes of action under Sections 1977 and 1977A out of the same or different factual situations, may proceed under both sections and recover damages under both sections for the independent causes of action.

For example, a minority woman may have a cause of action for damages for race or national origin discrimination which she may bring under both Sections 1977 and 1977A as well as a separate cause of action for sex discrimination under Section 1977A. She may also have a cause of action for combined race and sex discrimination, see, e.g., *Jefferies* v. *Harris City, Community Action Association*, 615 F.2d 1025 (5th Cir. 1980) which could be brought under both sections. Similarly, plaintiffs establishing both race and disability discrimination can recover damages under both provisions.

By limiting awards under Section 1977A to those situations where the complaining party "cannot recover under Section 1977 of the revised statutes (42 U.S.C. 1981)". Section 1977A simply assures that there will be no double recovery for the same harm, i.e., a party cannot recover for the same cause of action for race discrimination under both statutes. Moreover, if a party has a potential cause of action under Section 1977, but for whatever reason does not bring it, that party "cannot recover under Section 1977" within the meaning of this provision. Such party may therefore recover under Section 1977A since no double recovery could result. No party is under any obligation to proceed under one or the other statute or to waive any cause of action under either statute as a condition of proceeding.

In addition, the following points should be raised in connection with this section:

The new damages provision does not limit either the amount of damages available in section 1981 actions or the circumstances under which a person may bring suit under that section. Particularly, this bill affirms the holding of the Supreme Court in *Saint Francis College* v. *Al-Khazraji*, 481 U.S. 604 (1987), see also *Shaare Tefila Congregation* v. *Cobb*, 481 U.S. 615 (1987), that section 1981 was intended to protect from discrimination "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." Indeed, that discrimination is national origin discrimination which is also prohibited by Title VII.

Damages awarded under section 1977A cannot include remedies already available under Title VII including backpay, the interest thereon, front pay, or any other relief authorized under Title VII;

By explicitly referencing section 717 of Title VII, section (a)(1) of section 1977A assures that the damages remedy will be available in cases against federal defendants. As is clear from the fact that the section addressing the right to jury trials has been drafted without limitation, jury trials are available to the same extent in cases against federal defendants as they are in cases against any other defendant.

Section 1977A authorizes damages actions against state and local governmental defendants. By reference to sections 703, 704 and 706 of Title VII, the statutory language of section 1977A is explicit that compensatory damages are available against state and local governmental defendants although section (b)(1) clarifies that punitive damages are not. In so doing it reinforces the clear statutory intent that compensatory damages are available against federal, state and local governmental defendants to the same extent that they are available against private sector defendants; punitive damages are not.

Any party may demand a trial by jury regarding claims for which compensatory and/or punitive damages are sought. This jury right is without limitation and thus applies to all claims authorized by section 1977A including those against federal, state, or local governmental defendants.

The sponsors recognize the limited role of the judiciary in reviewing jury awards and intend that only this well-established supervisory role be applied to the review of jury awards under section 1977A. This legislation in no way suggests or authorizes any new or additional judicial authority in this area.

Section 1977A specifically authorizes the Equal Employment Opportunity Commission and the Attorney General, in addition to individual complaining parties, to bring actions for both compensatory and punitive damages. This legislation thus intends that the federal governmental agencies charged with enforcing Title VII and the Americans With Disabilities Act have authority to pursue both compensatory and punitive damages remedies to assure that the legislative purposes of compensation and deterrence are fully served for persons protected under section 1977A.

Punitive damages are available under 1977A to the same extent and under the same standards that they are available to plaintiffs under 42 U.S.C. §1981. No higher standard may be imposed.

While the bill extends the remedy of damages to intentional discrimination, this does not mean that there will be an automatic damages remedy if an affirmative action plan if found wanting or if a court-ordered affirmative action requirement is overturned. The EEOC has issued Affirmative Action Guidelines which set forth the standards for permissible affirmative action. 29 C.F.R. Part 1608, 44 Fed. Reg. 4422 (February 20, 1979). These guidelines invoke §713 of title VII, 42 U.S.C. §2000e–12, which provides immunity from liability under Title VII for respondents who prove that their actions were taken in good faith, in reliance on, and in conformity with, written interpretations and opinions of the EEOC. 29 C.F.R. §1608.2. These Guidelines also provide immunity from Title VII liability for actions taken by a respondent in compliance with a court order. 29 C.F.R. §1608.8. Thus, respondents have assurance that they will be free of the risk of damage actions under this bill if their affirmative plans meet these standards, or if they are acting under court order.

The sponsors acknowledge the limitations on damages awards in the legislation which apply to the damages available to each individual complaining party for each cause of action brought under Section 1981A. However, they reject any rationale that these limitations serve any function as a precedent for tort reform or any other limits on recovery.

SECTIONS 2 AND 3—FINDINGS AND PURPOSES

Section 3 states that one of the purposes of the legislation is "to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989)." Some have suggested, contrary to the plain meaning of this Section and of Section 2 ("Congress finds that—* * * the decision of the Supreme Court in *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections"), that the effect of Section 3 is to codify the treatment of business necessity in Wards Cove. The argument is that the Wards Cove standard of business necessity was part of the decision in *Watson* v. *Fort Worth Bank and Trust*, 487 U.S. 977 (1988) and was also articulated in a footnote in *New York City Transit Authority* v. *Beazer*, 440 U.S. 568 (1979). This argument is unfounded and these two decisions do not undermine in any way the fact that in virtually every disparate impact case decided prior to Wards Cove (including 6 out of 6 in the Supreme Court), the Court has applied a job performance or job relatedness standard of business necessity.

Watson was decided a year before Wards Cove and all Justices who voted concurred in the holding that disparate impact analysis may be applied to cases in which subjective criteria are used to make employment decisions. However, as to the evidentiary standards to be applied in disparate impact cases and the meaning of business necessity, the Justices were split and there was no majority opinion of the Court. A plurality asserted that Griggs would be satisfied if the employer's practice was "related to legitimate business purposes" or served "the employer's legitimate business goals," which the plurality acknowledged was a new expression of the business necessity rule.

Three Justices, on the other hand, argued that this was "simply not enough to legitimize a practice that has the effect of excluding a protected class from job opportunities at a significantly disproportionate rate," and that "[o]ur cases since *Griggs* make clear that this effect itself runs afoul of Title VII unless it is 'necessary to safe and efficient *job performance*.'" 101 L.Ed. 2d at 852 (emphasis added).

The plurality's formulation of the business necessity rule in Watson, while quite similar to the language used in Wards Cove, was never a binding decision of the Supreme Court or in any sense the law of the land because it did not command a majority of the Justices on the Court. It was not until a year later, when Justice Kennedy joined the Court and voted with the Watson plurality in Wards Cove, that the formulation of business necessity was actually weakened in what amounted to a significant departure from prior cases starting with *Griggs*.

The Watson decision thus offers no support to those who claim that the lenient standard of business necessity articulated in Wards Cove is included in what Section 3 of this bill refers to as "the other Supreme Court decision prior to Wards Cove." Moreover, the principal Senate sponsors of this bill have both stated that this bill overturns Wards Cove and that that has always been one of the key purposes of this legislation. It is not possible in the view of the sponsors that they intended at the same time to codify a nonbinding plurality opinion that contained essentially the same standard of business necessity expressed a year later in Wards Cove.

The point has also been asserted that the Supreme Court's 1979 decision in Beazer contains dicta in a footnote suggesting that the Court was adopting a business necessity rule similar to the one in Wards Cove, requiring the defendant to prove only that the challenged practice served legitimate employment objectives. An examination of that case and the footnote in question clearly shows that this assertion is incorrect. In Beazer the Court was presented with a practice that was plainly related to job performance. The practice at issue was a refusal to hire applicants who were being treated with methadone in order to overcome an addiction to heroin. Many methadone patients reverted to heroin use or other forms of drug or alcohol dependency which rendered them incapable of performing a job well if at all. 440 U.S. at 575–76 and nn.9–10, 577.

Although a majority of the Court doubted whether the plaintiffs had established a prima facie case of disparate impact, it found in fn. 31 that such evidence was rebutted by the Transit Authority's demonstration that its methadone rule was "job related." What was at issue in Beazer was the ability of workers to operate public transit without endangering the lives of the millions of people who ride the buses and subways in New York City every day. Indeed, the Supreme Court emphasized that the District Court had recognized "the special responsibility for public safety born by certain TA employees and the correlation between longevity in a methadone maintenance program and [job] performance capability." 440 U.S. at 578. See also 440 U.S. 571, 575–78 and n.31, n.33 and the references to the District Court's opinion at those pages. Thus nothing in the Beazer decision suggests that the Supreme Court was departing in 1979 from the job relatedness and job performance standard of business necessity that began with Griggs.

SECTION 105—BURDEN OF PROOF IN DISPARATE IMPACT CASES

Under this section, a disparate impact suit is brought in 3 stages. The legislation is not intended to alter the definition of the term "disparate impact" as it has been developed by the courts since 1971. Initially, the plaintiff has the burden of providing a prima facie case. *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405,425 (1975). A prima facie case is established when a plaintiff identifies a specific employment practice and demonstrates that the practice causes a disparate impact, except as described below.

This section codifies the proof burdens and meaning of the terms "job-related" and "business necessity" as used in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and overrules the proof burdens and treatment of business necessity as a defense in *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989). The phrase "job-related for the position in question and consistent with business necessity" was used in Section 102(b)(6) of the Americans with Disabilities Act. As explained in the legislative history and subsequent regulations issued under that Act, this language clearly requires proof by an employer of a close connection between a challenged practice with disparate impact and the ability to actually perform the job in question. See, e.g., Report on the ADA by House Committee on Education and Labor at H. Rept. 101–485

Part 2, 2d Session, pp. 70–72 (1990); Report on the ADA by the House Committee on the Judiciary at H. Rept. 101–485 Part 3, 2d Session, p. 42 (1990). See also, e.g., *Prewitt* v. *United States Postal Service*, 662 F. 2d 292, 310 (5th Cir. 1981) (construing Section 503 of the Rehabilitation Act of 1973 to require proof of close connection between the challenged practice and the requirements for performing the job in question). The House has agreed to accept this language in lieu of the formulation used in H.R. 1 because we are convinced that this language accomplishes the same purpose in the same manner as the language of H.R. 1, and clearly preserves the great body of disparate impact case law embodied in the holdings of the Supreme Court prior to Wards Cove and the decisions of the lower courts.

Indeed, it is clear that the courts applying the Griggs doctrine in the 18 years prior to Wards Cove and consistently and expressly rejected the lenient business necessity standard that was adopted in 1989 in Wards Cove and incorporated into the language of the Administration bill offered on March 1, 1991. That standard has been rejected in this legislation. The evidence is clear that for the 18 years prior to Wards Cove, the test applied almost universally in determining whether an employer had proven business necessity was one of job relatedness or job performance—terms which the Supreme Court and lower courts have used interchangeably in this context. These cases are collected in a July, 1991 study by the law firm of Fried, Frank, Harris, Shriver & Jacobson, entitled "From Griggs to Wards Cove: Job Performance, a Uniformly Applied Standard in Title VII Cases." In short, employers in nearly all cases prior to Wards Cove were permitted to justify practices that had a discriminatory impact only when they showed that such practices were significantly related to the ability to perform the job. Justifications such as customer preference, morale, corporate image, and convenience, while perhaps constituting "legitimate" goals of an employer, fall far short of the specific proof required under Griggs and this legislation to show that a challenged employment practice is closely tied to the requirements of performing the job in question and thus is "job related for the position in question".

With respect to restoring the burden on the employer to justify its practices that result in disparate impact, the language of Section 105 requires the employer to "demonstrate that the challenged practice is job related for the position in question and consistent with business necessity." Because the term "demonstrate" is defined in Section 104 to include the burdens of production and persuasion, this returns the burden of proving this defense to the employer. Moreover, this language in Section 105 plainly requires the employer to prove two things which together insure the restoration of the Griggs standard and the reversal of Wards Cove: 1) that the challenged practice is "job related for the position in question" and 2) that it is "consistent with business necessity."

Section 105 requires a complaining party to demonstrate that a particular employment practice causes a disparate impact. By use of the term "cause", the bill should not be read to require a plaintiff "to eliminate all alternative explanatory hypotheses for a disparate impact." See *Allen* v. *Seidman*, 881 F.2d 375, 380 (7th Cir. 1989). For example, if an employment test creates a disparate impact on the basis of race, a plaintiff would not be required to prove that a disadvantaged background was not an alternative, possible hypothesis for the disparate impact.

Similarly, as the Supreme Court discussed in the McDonnell Douglas case, if a complaining party demonstrates that the application of a written examination results in a disparate impact on blacks, the plaintiff is not required to demonstrate that differences in educational backgrounds or cultural differences did not cause the difference in performance between black and white test takers. This provision does not require a complaining party to prove that antecedent or underlying causes did not contribute to the disparate impact.

With respect to the need for specificity, there is one exception to the requirement that a complaining party identify each practice that causes a disparate impact. In order to invoke that exception, the complaining party must "demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation for analysis", and in that instance "the decision-making process may be analyzed as one employment practice."

For example, if employment decision-makers cannot reconstruct the basis for their employment decisions because uncontrolled discretion is given to a respondent's employment decision-makers, then the decision-making process may be treated as one employment practice and need not be identified by the complaining party as discrete practices. See *Sledge* v. *J.P. Stevens & Co.*, 52 EPD para. 39,537 (E.D.N.C. Nov. 30, 1989). Similarly, if a complaining party proves to a judge that it is impossible, for whatever reason, to reconstruct how practices were used in a decisionmaking process, then the decisionmaking process is incapable of separation for analysis and may be treated as one employment practice and challenged and defended as such.

Some members of Congress have suggested that the complaining party in a disparate impact case under this bill has the burden of proving the disparate impact of each specific employment practice even where this is impossible because the defendant kept no records showing the reason for accepting or rejecting specific candidates, or has destroyed or otherwise failed to produce such records as were kept. This suggestion is baseless. No supporter of this bill can reasonably claim that it imposes on any person an impossible burden. If the respondent's record-keeping or lack thereof deprives a plaintiff of the means to prove which particular practice caused a disparate impact, then it is clear that the plaintiff can aggregate the employer's practices and challenge the decisionmaking process as a whole. Even under Wards Cove such aggregation was allowed. See, e.g., *Green* v. *USX Corp.*, 896 F.2d 801, 805 (3d Cir. 1990). The language of Section 105 overrules Wards Cove's disaggregation requirement by liberalizing the rule; it does not make it more restrictive and require showings which cannot possibly be made.

As part of the burden of justifying an employment practice with disparate impact, a respondent must show, in accord with current law, that it has made reasonable efforts to find out whether a different practice with less disparate impact would serve its interests as well. The respondent should ordinarily be liable for any meaningful part of the adverse impact which would have been avoided by a reasonable inquiry, if the inquiry would have been likely to reveal to the respondent the availability of a different practice. The reasonableness of the inquiry will depend on the respondent's size and resources, the number of persons affected by the employment practice, and the degree of the adverse impact to be eliminated. The bill does not change this pre-existing obligation of respondents. See 43 Fed. Reg. 38290, 38297 (August 25, 1978).

The bill also provides statutory confirmation of the right of a plaintiff to prevail even if a respondent's employment practice with disparate impact is found to have been justified, by proving that the complaining party brought to the respondent's attention the availability of an alternative employment practice and established that the alternative practice has less disparate impact but served the respondent's needs as well as the challenged practice, and by proving that the respondent did not adopt the alternative practice. *Albemarle Paper*, 422 U.S. at 425. The plaintiff need not wait until trial to make the suggestion; the suggestion could even be made in advance of the filing of a charge with the EEOC. A respondent which unreasonably delays its adoption of the alternative practice has "refused to adopt" the alternative practice within the meaning of the bill. An employer cannot escape liability under this section by relying on minor problems with the proffered alternative which it could easily correct; a common-sense approach is required. The bill restores the law on such alternative practices to its status immediately prior to Wards Cove.

SECTION 106—PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES

Section 106 amends section 703 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2, by adding a new subsection (l) to ban the practice of "race-norming" and other practices used to alter or adjust the scores of job-applicants on employment-related tests used by an employer select or promote employees. The language of the section is broad and is designed to prohibit any action taken to adjust test scores, use different cutoff scores for selection or promotion, or otherwise adjust or alter in any way the results of employment-related tests on the basis of race, color, religion, sex, or national origin.

By its terms, the provision applies only to those tests that are "employment-related." Therefore, this section has no effect in disparate impact suits that raise the issue of whether or not a test is, in fact, employment related. The prohibitions of this section only become applicable once a test is determined to be employment related.

Similarly, this section does not alter existing legal requirements with respect to demonstrating that a test operates as fairly with respect to one gender or race as with respect to another. *Albermarle Paper*, 422 U.S. at 435, required test users under appropriate circumstances to investigate the possibility that a test might not work as well for women or minorities, for example, as it does for men or for whites. Employers and employment agencies are accustomed to this requirement. "Test fairness" requirements were contained in the Nixon Administration's 1970 EEOC Guidelines on Employee Selection Procedures, 35 Fed. Reg. 12333 (1970), the Ford Administration's 1976 Federal Executive Agency Guidelines on Employee Selection Procedures, 41 Fed. Reg. 51734 (1976), and section 14(A)(8) of the 1978 Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607.14(a)(8), 43 Fed. Reg. 38301 (1978).

For example, the National Research Council of the National Academy of Sciences performed an extensive study of the Labor Department's General Aptitude Test Battery, finding that whites performed much better on the test than they did on the job, while blacks performed much better on the job than they did on the test. "Fairness in Em-

ployment Testing" (National Academy Press, May 1989). A test which does not provide the same opportunity for selection to men and women, or blacks and whites, or Hispanics and Anglos who perform equally well on the job, or which predicts job performances differently because of race or gender, would not be a fair test and would not be 'job-related for the position in question and consistent with business necessity."

This long-standing legal requirement is fundamentally based on common sense. Applicants and workers of all races, ethnic groups, and genders have the right to a level playing field and to selection based on merit. Employment tests with built-in favoritism towards one race, ethnic group, or gender have been ruled improper under Title VII. Section 106 does not change this principle of law. By the same token, it does not affect how an employer or other respondent uses accurately reported test scores or require that test scores be used at all.

SECTION 107—CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES

Section 107 overrules one aspect of the Supreme Court's decision in *Price-Waterhouse* v. *Hopkins*, 109 S.Ct. 1775 (1989). The Court in *Price-Waterhouse* ruled that in a "mixed motive" case, even if an employee showed that sex or another prohibited factor played a part in an employer's adverse job decision, the employer could still escape liability by showing that it would have made the same job decision even in the absence of illegal discrimination. Section 107 reverses this holding and provides that it is unlawful for an employer to rely on race, sex, or any other prohibited factor in making a job decision, even if other factors involving no illegal discrimination also justify the employer's decision. Remedies for such a claim of discrimination would include declaratory relief, appropriate injunctive relief, and attorneys' fees and costs.

It is our clear understanding and intent that this section is not intended to provide an additional method to challenge affirmative action. As Section 116 of the legislation makes plain, nothing in this legislation is to be construed to affect court-ordered remedies, affirmative action, or conciliation agreements that are otherwise in accordance with the law. This understanding has been clear from the time this legislation was first proposed in 1990, and any suggestion to the contrary is flatly wrong.

SECTION 108—FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS

Section 108 provides for a new §703(n) in Title VII. It seeks to provide an orderly means by which the interests of all persons who could be affected by a litigated or consent judgment or order will be considered and resolved. It is in the best interests of both parties and nonparties that there be a full, fair, early, and—to the extent possible—final resolution of competing interests. The bill would provide protection for the parties to a litigated or consent judgment or order from repetitive challenges by persons having the same interests, and from unduly delayed challenges.

Section 108 protects the parties from challenges to employment practices implemented pursuant to a court order or judgment by individuals who have either (1) received notice and an opportunity to participate in the litigation but have declined to do so, or (2) who are raising a challenge which has already been adequately raised by another person with the same interest, and which was resolved against that person. The class of orders and judgments which are thus immunized includes both those entered by courts in contested litigation and those entered in voluntary settlement of litigated disputes.

Section 108 fully conforms to the requirements of due process. In *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314–15 (1950), the Supreme Court stated:

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information and it must afford a reasonable time for those interested to make their appearance. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied."

Section 108 codifies this due process inquiry: once it is determined that an applicant or employee had had notice of adverse proceedings and a reasonable opportunity to be heard but had failed to act, a subsequent collateral attack on the resulting order or judgment is an unlawful means of challenging that order or judgment. A clear majority of the courts of appeals considering the issue had so held prior to the decision in *Martin* v. *Wilks*, 490 U.S. 755 (1989). See, e.g., *Marino* v. *Ortiz*, 806 F.2d 1144 (2nd Cir., 1986), aff'd by an equally divided court, 484 U.S. 301 (1988); *Society Hill Civic Ass'n* v. *Harris*, 632 F.2d 1045 (3rd Cir., 1980); *Goins* v. *Bethlehem Steel Corp.*, 657 F.2d 62 (4th Cir., 1981), cert. den., 455 U.S. 940 (1982); *Thaggard* v. *City of Jackson*, 687 F.2d 66 (5th Cir., 1982), cert. den. sub nom *Ashley* v. *City of Jackson*, 464 U.S. 900 (1983); *Striff* v. *Mason*, 849 F.2d 240 (6th Cir., 1988); *Dennison* v. *Los Angeles Dept. of Water and Power*, 658 F.2d 694 (9th Cir., 1981). Section 108 codifies the rule of these cases barring subsequent collateral attacks in reverse-discrimination challenges, in all situations in which the conditions of §108 are met.

The notice contemplated by the bill need not be formal. The important factor is whether the person in question has actually obtained or been given the information that there is a possibility the lawsuit, judgment or order could adversely affect his or her interests, and that there was an opportunity to present objections on a future date certain. The opportunity accorded to non-parties to present objections must be reasonable.

The bill does not restrict or alter current law on the intervention of non-parties into a lawsuit. Similarly, the bill does not change the rule that non-parties are not bound by the result of a Title VII enforcement action brought by the EEOC or by the Attorney General, even if the government sought to obtain relief for the non-party in the governmental lawsuit. *General Telephone Co. of the Northwest* v. *EEOC*, 446 U.S. 318, 64 L. Ed. 2d 319 (1980); *Williamson* v. *Bethlehem Steel Corp.*, 468 F.2d. 1201 (2nd Cir., 1972), cert. den., 411 U.S. 931 (1973); *Bratton* v. *Bethlehem Steel Corp., 649 F.2d 658 (9th Cir., 1980).*

The bill also precludes persons who are raising a challenge after the court has already rejected a similar challenge which (1) involved the same legal grounds as the later challenge; (2) involved a factual situation similar to that of the later challenge; and (3) was adequately litigated by the prior challenger. There is no requirement that the prior challenger and the later challenger be in privity with each other, or that they have any relationship to each other going beyond what is contained in the bill. Binding persons not in privity with earlier litigants, but who were adequately represented by the prior litigants, is fully consistent with due process. See, e.g., *Hansberry* v. *Lee*, 311 U.S. 32, 40–43 (1940). The Martin decision itself recognized the fairness of statutory provisions establishing such a process. 490 U.S. at 762 n. 2.

Denying collateral attacks to persons who chose to sit on their hands despite their awareness that the resolution of the lawsuit could adversely affect them and despite actual notice of an opportunity to represent objections is fair. Particularly in light of the present congested nature of judicial dockets across the country, the allowance of belated, multiple, repetitive, and piece-meal challenges to judgments and orders would waste scarce judicial resources.

The bill does not restrict challenges to a litigated or consent judgment or order for certain narrowly defined defects. *See* new §703(n)(2)(c). A third party with standing to raise the issue may collaterally attack a judgment or order improperly obtained through fraud or collusion. Similarly, strangers to a judgment or order may be allowed to challenge the judgment or order by showing that the court was without jurisdiction. In addition, a decree may be challenged without restriction if it is so out of line with prevailing authority that it is transparently invalid. See also *Walker* v. *Birmingham*, 388 U.S. 307, 315 (1967).

Section 108 also explicitly allows any other challenges by a non-party where this is necessary to protect the rights of the non-party to due process of law. *See* new §703(n)(2)(D). This allows for case-by-case examination of particular situations. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Matthews* v. *Eldridge*, 424 U.S. 319, 334 (1976).

SECTION 112.—EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Legislation is needed to address the problems created by the Supreme Court's decision in *Lorance* v. *AT&T Technologies, Inc.* 109 S. Ct. 2261 (1989). The plaintiffs in Lorance alleged that a seniority rule governing layoffs had been adopted for the purpose of discriminating against women. The seniority rule was first adopted in 1979. The seniority rule was not applied until the fall of 1982, when the company envoked it to lay off Lorance and the other plaintiffs. The plaintiffs promptly filed Title VII charges with EEOC, asserting that the rule applied to them in 1982 had been motivated by discrimination.

A majority of the court held that the plaintiffs claims were time barred because the statute of limitations begins to run when the seniority rule was adopted, not when it is applied to the complaining party. The unfairness of this rule is apparent. The holding in this case would require employees seeking to protect their interests to challenge immediately any new rule or practice that might conceivably be applied to adversely affect them in the future.

Under section 112, the limitation period begins to run on the later of the date when an alleged discriminatory seniority system is adopted, when an individual becomes subject to a seniority system, or when an individual aggrieved is injured by the application of the seniority system.

Unfortunately, some lower courts have begun to apply the "Lorrance rationale" outside of the context of seniority systems, for example to bar challenges to allegedly discriminatory promotion policies unless the challenge is made at the time the policies are adopted, rather than when they were applied to deny a promotion to the claimant *Davis* v. *Boeing Helicopter Co.* (E. D. Pa, October 24, 1989). It has also been applied to bar a challenge under the Age Discrimination In Employment Act to a suit challenging application of an early retirement plan. *EEOC* v. *City Colleges of Chicago*, No. 90-3162 (7th Cir. September 16, 1991). This legislation should be interpreted as disapproving the extension of this decision rule to contexts outside of seniority systems.

This legislation should not be interpreted to affect the sound rulings of the Supreme Court regarding "continuing violations" theory under Title VII. See *Delaware State College* v. *Ricks*, 449 U.S. 250 (1980).

SECTION 113—AUTHORIZING AWARD OF EXPERT FEES

Section 113 makes the clarification for cases brought under Title VII of the 1964 Civil Rights Act, Section 1977 of the Revised Statutes, or 1977A of the Revised Statutes that is required by *West Virginia Hospitals* v. *Casey*, No. 89-994 (U.S. Sup. Ct. Mar. 19, 1991) that expert fees are available to prevailing plaintiffs. This provision ensures the recovery of testimonial and non-testimonial expert fees incurred in preparing and successfully prosecuting suits brought under these statutes. It recognizes that the hiring and use of experts is essential to the preparation and prosecution of suits brought under these statutes, and provides for the recovery by prevailing plaintiffs of such expenses in the same manner as they recover attorneys' fees. Section 113 thus renders irrelevant in such cases the decision in *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.*, 482 U.S. 437 (1987).

SECTION 116—LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION AND CONCILIATION AGREEMENTS NOT AFFECTED

Section 116 provides that nothing in this legislation is to be construed to affect court-ordered remedies, affirmative action, or conciliation agreements that are otherwise in accordance with the law a previously established by Congress in Title VII and by the decisions of the United States Supreme Court. The intent of this provision is clear: the legislation is not intended to change in any way what constitutes lawful affirmative action or what constitutes impermissible reverse discrimination from what the law was prior to the legislation. A provision evidencing this intent has been included in every proposed version of the legislation since it was introduced in 1990, and every version has been explained by its sponsors in the same way: the intent is to leave things the way they were before passage of the legislation with respect to the legality of affirmative action.

SECTION 118—ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Section 118 encourages the use of alternative dispute resolution mechanisms, such as conciliation and mediation, to resolve disputes arising under Title VII when appropriate and to the extent authorized by law. This proviso is intended to supplement, not supplant, remedies provided by Title VII, and is not to be used to preclude rights and remedies that would otherwise be available. This section is intended to be consistent with decisions such as *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974), which protect employees from being required to agree in advance to arbitrate disputes under Title VII and to refrain from exercising their right to seek relief under Title VII itself. This section contemplates the use of voluntary arbitration to resolve specific disputes after they have arisen, not coercive attempts to force employees in advance to forego statutory rights. No approval whatsoever is intended of the Supreme Court's recent decision in *Gilbert* v. *Interstate Johnson Lane Corp.*, 111 S.Ct. 1647 (1991), or any application or extension of it to Title VII. This section is virtually identical to section 216 in H.R. 1 as previously passed by the House in this Congress and as explained in H.R. Rep. No. 102-40, 102 Cong., 1st Sess. 97 (1991).

SECTION 401—SEVERABILITY

Section 401 expresses the sponsors' intention that, in the event that any section, subsection, or provision of the Act, any amendment made by the Act, or any application of a section, subsection, or provision of the Act to any person or in any circumstances is held invalid, the remainder of the Act, of the amendments made by the Act, or the application of such provision to other persons and in other circumstances shall not be affected.

SECTION 402—EFFECTIVE DATE

The bill states that it takes effect on the date of enactment. The intent of the sponsors is that this language be given its normal effect, and that the provisions of the bill be applied to pending cases except where the bill expressly provides otherwise.

Two provisions of the bill make express exceptions to the rule that the bill takes effect with respect to pending cases on the date of enactment. Section 109 of the bill contains the provision reversing the *Aramco* decision denying the extraterritorial application of Title VII and providing for extraterritorial application of the Americans with Disabilities Act. Section 109(c) states: "The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act." Section 402(b) states: "Notwithstanding any other provisions of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983." The latter provision was intended to craft a special rule of law protecting the defendant in *Ward Cove Packing Co., Inc.* v. *Atonio*, 490 U.S. 642 (1989), from the application of the parts of the bill overruling the *Ward Cove* decision. These amendments express a clear purpose to deny retroactive application in the circumstances set forth. Our decision not to use similar language in §402(a) clearly shows our different purpose in all other circumstances.

The application of this bill to pending cases is eminently fair. Much of the conduct of employers and other respondents at issue in pending cases was committed before the Supreme Court radically altered the legal landscape, at a time when the defendants were on notice that the law applied to their conduct and they could be held accountable for their misdeeds. Our restoration of the law to these pending cases will often mean that the parties will be governed by the law they all understood to exist at the time the actions in question were taken. To fail to apply the law retroactively in these situations would give the respondents an undeserved windfall from the intervening Supreme Court errors. The application of this bill to pending cases thus does not involve any of the problems of unfairness or potential unconstitutionality which would have attended the retroactive imposition of novel requirements, or those which would have been impossible to predict. See *Miller* v. *United States*, 294 U.S. 435, 438-40 (1934) (refusing to allow a regulation retroactively to enlarge a soldier's rights under a war risk insurance policy which had long since lapsed); *Union Pacific Ry. Co.* v. *Laramie Stock Yards Co.*, 231 U.S. 190, 199-213 (1913) (refusing to allow legislation allowing adverse possession of a property granted for a railroad right-of-way to operate retrospectively during a prior period when the railroad would have had no occasion to take any action protective of its rights).

Practical concerns, as well as those of elementary fairness, have led us to the conclusion that the application of the bill to pending cases is essential. Litigation under Title VII and §1981 can take decades to resolve. E.g., *Pettway* v. *American Cast Iron Pipe Co.*, 576 F.2d 1157, 1165, 1168 (5th Cir., 1978), a case which began with EEOC charges filed in 1965 ("The length of litigation in complex Title VII class actions often rivals that of even the most notorious antitrust cases. In the instant case, we encounter another judicial paleolithic museum piece."); *Peques* v. *Mississippi State Employment Service*, 899 F.2d 1449, 1451, 1453 (5th Cir., 1990) (case involved wrongful conduct as far back as 1969). To have limited this legislation to conduct occurring after the date of enactment would have led to an intolerable result: For the next two decades, the courts would be handing down two sets of contradictory decisions: one set of decisions would explicate the law as Congress has enacted it, and the other would further develop fine points of the law under Wards Cove, Patterson, Lorance, Price Waterhouse, etc., long after Congress has repudiated those decisions. Confusion between the two lines of case would be inevitable, and the protections enacted by this bill would become clouded even as to future conduct.

In addition, the nation cannot afford such an appalling waste of judicial resources, and the correspondingly tremendous increase in the legal expenses of resolving these cases. At a time when the courts are hard-pressed to handle the heavy volume of criminal and civil matters pressing for resolution, it would be senseless to condemn them to pointless exercises such as the further development of already-overruled decisions. At a time when the Administration, the Congress, and the legal profession are trying to discover means of reducing legal expenses, it would be senseless to insist upon such an endless and meaningless spinning of wheels. When Congress has determined that its legislation has been wrongly construed, the error must be brought to an end, not given artificial respiration for the foreseeable future.

There is nothing unusual in the application of legislation to pending cases. Indeed, the Supreme Court has even adopted rules for determining when legislation shall be given retroactive effect in the absence of the kind of clear indication of Congressional intent exemplified by this bill. The text of legislation can also provide a clear indication that it is not to be applied retroactively, even to pending cases. An example is the use of a postponed effective date. *Kaiser Aluminum* v. *Bonjorno*, 494 U.S. , 108 L.Ed.2d 842, 110 S.Ct. 1570 (1990) (amendment to 28 U.S.C. §1961 providing a different rate of postjudgment interest). The Pregnancy Discrimination Act of 1978 contained a postponed effective date as to existing fringe benefit and insurance programs. Pub. L. 95-555, 92 Stat. 2076. The general rule on the retroactivity of legislation affecting the rights of private persons in relation to each

other, but silent on the question of retroactivity, was set forth in *Bradley* v. *School Board of City of Richmond*, 416 U.S. 696 (1974). That case involved the retroactivity of a fee-shifting statute in a school desegregation case. *Bradley* held that the following tests should govern the determination of retroactivity in particular statutes, 416 U.S. at 717:

(a) The first test is "the nature and identity of the parties." This test concerns the relative power and resources of the parties. The Court emphasized (1) the far greater power and resources of the school board, compared to those of the student, and (2) the fact that the dispute between them was not a simple private lawsuit in which the public interest was not engaged; plaintiffs were enforcing the public interest as well as their own rights. The Court cited *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801), holding that in cases involving "* * * great national concerns * * * the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside."

As the text of the bill, including its findings and purposes, makes clear, this legislation would fully meet this part of the Bradley test even without its provisions on its effective date, its exceptions to the general rule of retroactivity, and its legislative history.

(b) The second test is "the nature of their rights". This test concerns the possibility of injustice. The example involved the Court's refusal to apply an intervening change to a pending action where it had concluded that to do so would infringe upon or deprive a person of a right that had matured or become unconditional. A leading example of a right which had "matured" is *Greene* v. *United States*, 376 U.S. 149, 11 L.Ed.2d 576, 84 S.Ct. 615 (1964). There, Greene had obtained a final adjudication that his security clearance had been unlawfully taken away, and he had filed a back pay claim under a 1955 regulation. A 1960 regulation adopted after his claim was filed would have changed the substantive standards and made it difficult for him to recover. The Court held that Green's rights had matured and become vested, and refused to apply the 1960 regulation retroactively. *Thorpe* v. *Housing Authority of City of Durham*, 393 U.S. 268, 282, 21 L.Ed.2d 474, 484, 89 S.Ct. 518 (1969), described Greene as a case in which retroactive application of the new rule would have worked "manifest injustice". And see *Int'l Union of Electrical Workers* v. *Robbins & Myers*, 429 U.S. 229 (1976), which held that the Congressional extension of the charge-filing period from 90 days to 180 days, in §14 of the Equal Employment Opportunity Act of 1972, 86 Stat. 103, applied to resurrect the plaintiff's claim even though it was already untimely when it was filed with the EEOC, because it was still pending with the EEOC on the date of enactment.

(c) The third test is "the nature of the impact of the change in law upon those rights". This concern "stems from the possibility that new and unanticipated obligations may be imposed upon a party without notice or an opportunity to be heard." The Court held that this test was met because the Board had theoretically been subject to a fee award under common-law principles, so the enactment of §718 worked no change in its obligations. Here, the relative clarity of Title VII and §1981 before the Supreme Court's erroneous constructions, and the widely publicized pendency of this legislation, fairly served to put employers on notice of their fair obligations.

While there is a line of cases disfavoring the retroactive application of legislation in the absence of the kind of clear indication to be found in the text and legislative history of this bill, these cases tend not to involve the rights of private parties vis-a-vis each other, but the rights of individuals against the government. Where power is so unequal, it is often salutary that the more powerful governmental party be held to bear the consequences of ambiguity, much as the party drafting a complex contract such as a contract of insurance will be held to suffer the consequences of ambiguity as against private parties with little power to change the terms of the contract. E.g., *Brown* v. *Georgetown University Hospital*, 488 U.S. 204 (1988), holding that the Administrative Procedure Act and the Medicare Act did not give the Secretary of Health and Human Services the authority to promulgate retroactive limitations on reimbursable costs; *Greene* v. *United States*, 376 U.S. 149, 160 (1964), holding that the government could not by a retroactive regulation defeat a matured right to equitable restitution of pay lost by an improperly denied security clearance; *Claridge Apts. Co.* v. *Comm'r of Internal Revenue*, 323 U.S. 141, 162–64 (1944), holding that the government could not retroactively apply a new tax rule to closed and settled proceedings where this would treat such taxpayers harshly, but could only apply the rule to pending proceedings; *United States* v. *Magnolia Petroleum Co.*, 276 U.S. 160 (1928), holding that the government could not rely on a subsequent statute to defeat a matured claim for interest on a tax refund.

The provisions of this bill, by contrast, protect the interests of the weak against the powerful where the weak had no ability to influence the course of events but the powerful were at all times on notice that their conduct may be reached by the then-existing law or by the provisions of corrective legislation which would be applied to pending cases.

Finally, one of the factors impelling us towards application of the bill to pending cases is that the bulk of the changes made by the legislation affect procedural rather than substantive rights. The allocation of the burden of proof, the articulation of that standard of proof, the provision governing the cumulation of employment practices, the provision of relief in mixed-motive cases, the adjustment of the limitations period in seniority cases, the provision of a longer suit-filing period against the Federal government, the provision of interest as a remedy in cases against the Federal government, the restoration of liability and remedies under §1977 of the Revised Statutes and the provision of enhanced remedies under new §1977A of the Revised Statutes for conduct which is already a violation of Title VII for covered employers, the reimbursement of expert fees, and similar provisions, are primarily procedural corrections of the law.

Accordingly, the great weight of the caselaw supports the application of this bill to pending cases. The Bowen and Bonjorno cases, cited by a Senate sponsor of the bill as supporting a contrary view, are simply not applicable to the circumstances here for the reasons we have specified above.

THE RELATIONSHIP BETWEEN THE CIVIL RIGHTS BILL OF 1991 AND THE AMERICANS WITH DISABILITIES ACT OF 1990

Section 107 of S. 1745 provides that an unlawful employment practice is established when a plaintiff demonstrates that a protected class status was a motivating factor for an employment practice. This policy is comparable to the standard already adopted under the ADA. (See e.g., Sen. Rpt. No. 101–116 at page 45; H. Rpt. No. 101–485, Part 2, at 85–86.)

Other sections of the Civil Rights Act of 1991, which amend section 706 of title VII, are explicitly incorporated into the ADA through section 107(a) of the ADA.

Section 102 of S. 1745 states explicitly that damages are available under the ADA for all cases of unlawful intentional discrimination; that is, not an employment practice that is unlawful because of its disparate impact, or for violations of the reasonable accommodation provision in section 102(b)(5) of the ADA.

Causes of action for disparate impact are limited to section 102(b)(3)(A) and part of section 102(b)(6) of the ADA (except for practices intended to screen out individuals with disabilities).

Section 1977A(a)(3) provides that damages are not available if the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

It is my intent that a demonstration of good faith efforts must include objective evidence that the process of determining the appropriate reasonable accommodation has been conscientiously complied with by the covered entity. This process is described in the Senate Report accompanying the ADA (S. Rpt. 101–116) at pages 34–35 and the analysis accompanying the final regulations implementing title I of the ADA promulgated by the EEOC (56 Fed. Reg. 35748–49 (July 26, 1991)).

The legal mandate that the reasonable accommodation provides the individual with a disability an "equally effective opportunity" means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. (See analysis by the EEOC accompanying the regulation implementing title I of the ADA (56 Fed. Reg. 35748 (July 26, 1991)).

Mr. BROOKS. Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New York [Mr. FISH], the ranking minority member on the Judiciary Committee.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. FISH. I yield to the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, let me just enter into a colloquy, if I may, with the distinguished chairman and ranking member to establish some legislative history.

When the gentleman from Texas appeared in the Rules Committee yesterday I raised an issue of concern. In my home State of New York and across the Nation about this bill as passed by the Senate, which provides as part of the Senate rules that in hiring Senate employees it shall not be a violation to consider party affiliation, domicile, or political compatibility with the em-

ploying office. Similar protection for House Members seems to be provided in this bill.

The problem is that there is no similar language to protect other elected officials who may legitimately be expected to take into consideration factors of, and listen up, party affiliation, domicile or political compatibility with the employing office.

Yesterday in the Rules Committee I did not offer an amendment to make this correction because we had to move this bill at the request of the chairman and ranking member. I did not offer it at that time, but I do seek assurance from the chairman of the Judiciary Committee that there is nothing in this bill which is intended to restrict the ability of elected officials to hire their staff or make other employment decisions taking into consideration party affiliation, domicile or political compatibility with the employing office. In other words, those officials will be treated exactly like we and the Senators next door.

Does the gentleman from Texas concur with that statement?

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. FISH. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, in response to my distinguished friend from New York, to the extent that U.S. Senators may consider party affiliation, domicile, or political compatibility in making employment decisions, it is the intent and effect of the bill that State and local elected officials, who are not specifically mentioned in section 316, may do likewise.

□ 1500

Mr. SOLOMON. Mr. Speaker, does the gentleman from New York [Mr. FISH] concur with that statement?

Mr. FISH. Mr. Speaker, I concur with the chairman's statement.

Mr. SOLOMON. I deeply thank the gentleman for his consideration.

Mr. FISH. Mr. Speaker, I am delighted that the effort to achieve broad consensus on major civil rights legislation has reached fruition. During the last 2 years, I have participated actively in reformulating key provisions of this legislation in response to problems identified by the administration, the members of the business community, and others. The Brooks-Fish substitute, which the House passed in June, incorporated a number of innovations that substantially improved H.R. 1.

The Senate-passed version of the Danforth bill, S. 1745, finally resolves outstanding administration concerns and brings together Members of Congress of different political persuasions. Republicans and Democrats have worked together to reach accommodations that both advance important civil rights objectives and meet employer needs.

S. 1745, like earlier versions of this legislation, addresses the problematic consequences of five 1989 Supreme Court decisions that are deleterious to civil rights. When the Supreme Court renders restrictive interpretations of civil rights laws designed to protect women and members of minority groups, it is incumbent on us—as the authors of such legislation—to clarify the meaning of the congressional design in ways that preserve and strengthen essential safeguards. This bill effectively overturns Supreme Court rulings because we cannot ignore the judicial erosion of important protections for women and members of minority groups.

In Patterson versus McLean Credit Union the Supreme Court concluded that 1866 legislation barring racial discrimination in the making and enforcement of contracts—today referred to as section 1981—"covers only conduct at the initial formation of the contract and conduct which impairs the right to enforce contract obligations through legal process." The bill before us gives expression to broad agreement that it is debilitating when civil rights legislation, enacted in the immediate aftermath of the Civil War, is interpreted not to bar discriminatory harassment on the job.

In Lorance versus AT&T, the Supreme Court held that the period of the statute of limitations begins to run at the time certain seniority systems are adopted, even though their application to particular individuals may occur years later. By enacting this legislation, we give expression to the conviction that it is unfair to bar employees who cannot anticipate adverse impacts in advance from challenging seniority systems adopted with unlawful discriminatory motives.

The decision in Martin versus Wilks must not stand because it is disruptive to reopen consent decrees in civil rights cases when groups choose not to intervene in a timely fashion. On the contrary, we must discourage relitigating issues that already have been resolved if the circumstances are fair to those who seek to initiate new challenges. Legislative action is needed to protect the finality of judgments and orders.

The Price Waterhouse problem must be rectified because it is unjust for our courts to ignore reliance on discriminatory employment criteria simply because an employer can show that "its legitimate reason, standing alone, would have induced it to make the same decision." This legislation gives expression to our recognition that discriminatory practices must be discouraged regardless of whether they turn out to be outcome determinative.

The administration and supporters of civil rights legislation had disagreed in the past on the scope of problems resulting from Wards Cove versus Atonio, but shared the view that the burden of proof issue required congressional attention. This legislation expresses the consensus that it is unreasonable to require individuals denied employment opportunities to disprove a business justification—a matter within the employer's special knowledge.

Prior efforts to achieve broad support for a civil rights bill failed in part because of disagreements over formulations of business necessity. Employment practices causing disparate impact may not be unlawful; business necessity serves as a potential defense. The administration believed that employers would rely on quotas if they faced an unreasonable business necessity standard for justifying employment practices that adversely impact on particular groups.

We tried on different occasions to arrive at a business necessity definition that would meet administration concerns without defeating legitimate discrimination claims. Eventually, brevity proved to be the key to compromise on this technical, contentious issue. An employment practice that causes disparate impact must be "job related for the position in question and consistent with business necessity"—to cite the language of S. 1745. One of the purposes of the legislation is "to codify the concepts of 'business necessity' and 'job related'" in Griggs and other pre-Wards Cove Supreme Court decisions.

The second major area of disagreement related to the cap on damages for intentional discrimination. The Brooks-Fish substitute capped only punitive damages at $150,000 or the sum of compensatory damages and back pay, whichever is greater. The cap in S. 1745 limits the sum of compensatory and punitive damages—and increases as the number of employees increases from $50,000 for 15 to 100 employees to $300,000 for more than 500 employees.

We all recognize that it is too late in our national struggle for equal opportunity to contend that damages may be justified for the victims of racial discrimination but not for those who suffer from intentional discrimination based on other invidious criteria—such as discrimination based on sex. Monetary relief can discourage various pernicious forms of intentional employment discrimination and provide a necessary remedy for those who continue to be victimized. The bill before us incorporates a cap on damages that seeks to accommodate employer concerns at the same time that we protect the civil rights of our work force.

Men and women of goodwill have reconciled their differences and fashioned effective legislation. The result is a civil rights bill that unites rather than divides us. We can be proud that the bill before us safeguards the civil rights of our work force.

I have derived tremendous personal satisfaction, during my service in the

Congress, from a number of opportunities to advance important civil rights initiatives. Today I am delighted that we are so united in again responding appropriately to the reality of discrimination.

Mr. FORD of Michigan. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I rise in support of S. 1745, the Civil Rights Act of 1991.

Before going on, I would like to state to the body that this has been my first year in handling this legislation as the chairman of the Committee on Education and Labor, and it has been a great privilege for me to work with one of the real experienced and skillful legislators around here, the gentleman from Texas [Mr. BROOKS], the committee chairman, and the chairman of his subcommittee, the gentleman from California [Mr. EDWARDS]. Both of them have been here a lot longer than I, although I guess I would be caught by term limits if they came into being. But I have benefited from working with them and considered this year to have been worth it to me for what I have learned working with the two of them.

The gentleman from Texas [Mr. BROOKS], in particular, is a dear friend whom I have come to admire even more as a professional and as a lawyer in handling this legislation.

Mr. Speaker, I rise in support of S. 1745, the Civil Rights Act of 1991. The twin cornerstones of S. 1745—overturning Wards Cove versus Antonio, Price Waterhouse versus Hopkins, Martin versus Wilks, Lorance versus ATT, Patterson versus McClean Credit Union, EEOC versus Aramco, and Crawford Fittings versus J.T. Gibbons and providing all victims of intentional discrimination a right to trial by jury and an award of compensatory and punitive damages—fulfill all of the fundamental goals of H.R. 1.

S. 1745 reflects the obvious decision of opponents of earlier versions to switch rather than continue to fight the overturn of Supreme Court decisions which weakened Federal safeguards against job discrimination.

S. 1745 also represents an end to the subterfuge and innuendo, largely promoted by the Bush administration, which have hindered our efforts to restore a balance of fairness and equity to the workplace.

I note that S. 1745 also embodies two significant provisions added to H.R. 1 at the Education and Labor Committee markup—an independent Glass Ceiling Commission to study the underrepresentation of women and minorities in the management of American business and a directive to the EEOC to establish more effective programs of educational outreach to populations historically underserved in terms of enforcement of their title VII rights.

Mr. Speaker, when the Nation first embarked on its journey 35 years ago to overcome two centuries of intentional and systemic discrimination, business and labor; local, State and Federal Governments; the executive branch, Congress and the courts all worked together. And the result has been that of almost any sector of American life, the progress toward equality has been greatest in the workplace.

All that was threatened when the Supreme Court in a series of decisions in 1989 broke rank with Congress and a consensus of the American people on our march toward the goal of equal justice and equal employment opportunity.

S. 1745 makes right what the Supreme Court made wrong and sends a powerful message that the American people reject the Supreme Court's narrow and crabbed interpretation of civil rights laws generally and equal employment opportunity statutes specifically.

Mr. Speaker, there are two issues deserving of additional comment.

As we all know, that Danforth compromise being considered today is the product of a 2 year legislative process and protracted negotiations between Senator DANFORTH and the administration. Like so many compromises, Senator DANFORTH and the administration agreed not only to actual statutory language but also to the content of an exclusive interpretative memorandum to guide the implementation of the employers' business necessity defense and an exception to the requirement that plaintiffs identify particular practices being challenged. Senator DANFORTH, Senator KENNEDY, Senator HATCH, and Senate minority leader DOLE, introduced that exclusive interpretive memorandum during the debate in the other body and, no doubt in an excess of caution, those Senators took the additional, extraordinary step to codify the memorandum, thereby transforming its status from simple guidance to statutory language binding on all. Thus, section 105(b) of the Danforth compromise provides:

> No statements other than the interpretative memorandum appearing at Vol. 137, CONGRESSIONAL RECORD S. 15276 (daily ed., Oct. 25, 1991) shall be considered legislative history of, or relied upon in anyway as legislative history in contouring or applying any provision of this Act that relates to Wards Cove, Business necessity/cumulation/alternative business practices.

Notwithstanding that extraordinary amendment, there were a spate of other floor statements concerning the meaning of "business necessity" and the "particularity" requirement in a valiant but vain effort to win interpretative advantage through "spin" control rather than through the normal legislative give-and-take and negotiation which resulted in the Danforth compromise.

Fortunately for employers, employees, lawyers and the courts, the true meaning and contours of an employers' business necessity defense and plaintiffs' particularity requirement are not difficult to discern. Neither concept materialized on the legislative doorstep for the first time at the 11th hour. Rather, both concepts are direct descendents of antecedent legislative proposals introduced, debated and voted on in either the House or the other body during the past 2 years. Those earlier proposals and accompanying explanatory materials are a rich paper trail attesting to the origin and meaning of the employers' business necessity defense and the exception to plaintiffs' particularity requirement.

PARTICULARITY

The Danforth compromise requires plaintiffs to demonstrate that:

> Each particular challenged employment practice causes a disparate impact; except that if the complaining party can demonstrate to the court that the elements of a respondent's decision making process is not capable of separation for analysis, the decision-making process may be analyzed as one unemployment practice.

The meaning and scope of the exception to the particularity requirement set forth above is of concern to many because such exception negates that aspect of Wards Cove which held that plaintiffs must always identify the specific employment practices that have produced the challenged disparate impact. The Danforth compromise explicitly permits challenges to multiple job requirements to the extent plaintiffs "can demonstrate to the court that the respondents' decisionmaking process is not capable of separation for analysis."

The contours of that exception are not difficult to fathom. That language was first proposed by the administration on October 21, 1990. In a written message accompanying the veto of the Civil Rights Act of 1990, the administration proposed to relieve plaintiffs from identifying the specific practices being challenged when:

> The elements of a decision-making process are not capable of separation for analysis, they may be analyzed as one employment practice. Civil Rights Act of 1990, Message From the President of the United States Transmitting Alternative Language to S. 2104 As Passed By The Congress October 21, 1990, 101st Cong., 2d Sess. H. Doc. 101-251, p. 5 ("1990 Message").

The section-by-section analysis accompanying the President's veto message set forth the following explanation of the proposed language:

> In identifying the particular employment practice alleged to cause disparate impact, the plaintiff is not required to do the impossible in breaking down an employer's practices to the greatest conceivable degree. Courts will be permitted to hold, for example, that vesting complete hiring discretion in an individual guided only by unknown subjective standards constitutes a single particular employment practice susceptible to challenge.
>
> It is therefore the specific intention of the proponents of this Act to reaffirm the sort of

analysis employed on this issue in *Sledge* v. *J.P. Stevens & Co.* 52 EPD para. 39,537 (E.D.N.C. Nov. 30, 1989). The court alluded to the difficulty of "delving into the workings of an employment decisionmaker's mind" and noted that the defendant's personnel officers reported having no idea of the basis on which they made their employment decisions. The court held that: "the identification by the plaintiffs of the uncontrolled, subjective discretion of defendant's employing officials as the source of the discrimination shown by plaintiff's statistics sufficed to satisfy the causation requirements of Wards Cove." This Act contemplates that the use of such uncontrolled and unexplained discretion is properly treated as one employment practice and need not be divided by the plaintiff into discrete sub-parts.

If the elements of a decision-making process are demonstrated to be not capable of separation for analysis, therefore, they may be analyzed as one employment practice, just as where the criteria are distinct and separate each must be identified with particularity. See letter of Charles Fried to Senator Edward M. Kennedy, March 21, 1990 at 4 n.2.

Id. at 21.

Former Solicitor General Charles Fried's letter, cited in the administration's section-by-section analysis, reaffirmed his February 23, 1989 testimony before the Labor Committee of the other body describing circumstances in which the elements of a decisionmaking process are not capable of separation for analysis:

The CHAIRMAN. Well, you in your own brief, the United States, it's been referred to in Wards Cove, which you signed as solicitor general, explicitly acknowledged the appropriateness of permitting challenges to groups of employment practices in these circumstances.

You point out: "Of course, the decision rule for selection may be complex. It may, for example, involve considerations of multiple factors, and certainly if the factors combine to produce a single ultimate result, it is not possible to challenge each one. That decision may be challenged as a whole."

Mr. FRIED. Senator, that—and here I must say that what one does when you write a brief for the Government you don't just put in everything that makes your case more comfortable. You don't exaggerate it, and you acknowledge difficulties. And that is a difficulty. Where you have an employment requirement which really is made up of several different pieces and you understand that you can't pull it apart.

Hearings before the Senate Labor and Human Resource Committee on S. 2104, The Civil Rights Act of 1990, 101st Cong., 1st Ses. S. Hrg. 101-649, February 23, 1989, at 83.

In addition, the bipartisan interpretative memorandum of Senator DANFORTH, Senator KENNEDY, Senator HATCH, and Minority Leader DOLE, which the administration embraced, further exempts plaintiffs from the particularity requirement when:

A decision-making process includes particular, functionally-integrated practices which are components of the same criterion, standard, method of administration, or test, such as the height and weight requirements designed to measure strength in *Dothard* v. *Rawlinson*, 4334-S-321 (1977), the particular functionally-integrated practices may be analyzed as one employment practice.

Thus, statements that "the bill leaves unchanged the longstanding requirement that a plaintiff identify the particular practice which he or she is challenging in a disparate impact case" (vol. 137 CONGRESSIONAL RECORD S15473), that "it always requires the complaining party to demonstrate that the respondent uses a particular employment practice * * *" (vol. 137 CONGRESSIONAL RECORD S15474) and that "language permitting challenge to multiple practices * * * has been eliminated" (vol. 137 CONGRESSIONAL RECORD S15474) are flatly wrong and clearly reconcilable with the administration's prior explanations when it first proposed the "particularity" language which we agreed to accept as part of the final compromise. Those views also are facially inconsistent with the bipartisan interpretative memorandum which now is part of the statute.

BUSINESS NECESSITY

In Wards Cove, the Supreme Court defined "business necessity" to require discriminatory employment practices to "serve in a significant way the legitimate employment goals of the employer." In testimony before the House Education and Labor Committee, then-Deputy Attorney General Don Ayer acknowledged that in the Wards Cove case "the United States filed a brief essentially on most elements supporting the conclusion that the Court reached." Hearings before the House Committee on Education and Labor and the House Judiciary Subcommittee on Civil and Constitutional Rights, on H.R. 4000, the Civil Rights Act of 1990, 101st Cong., 2d sess. vols. 1-3 at 381. Others who endorsed Wards Cove candidly admitted their belief that the Supreme Court's landmark, unanimous 1971 decision in Griggs versus Duke Power Co. was wrongly decided. Id., at 657-58.

During the past 2 years, few of us who supported comprehensive civil rights legislation doubted the administration's resolve to codify Wards Cove. And today, many of the administration's supporters contend that the decision in Wards Cove remains a viable precedent to be followed by employers, employees, lawyers, and the court. Specifically, they assert that "the bill * * * represents an affirmatory of existing law, including Wards Cove * * * (vol. 137 CONGRESSIONAL RECORD S15474), that the "Wards Cove formulation of business necessity is not overruled by this bill" (vol. 137 CONGRESSIONAL RECORD S15317), and that "the burden of proof issue is the only part of Wards Cove overruled by this bill" (vol. 137 CONGRESSIONAL RECORD S15315). Regrettably, those who make that argument have inexplicably chosen to ignore the plain meaning and command of the statute, the demise of numerous legislative proposals to codify Wards Cove, and the unambiguous interpretation of an identical formulation of the employers' business necessity defense embodied in the Americans With Disabilities Act.

The Danforth compromise requires employers to demonstrate that an employment practice which causes a disparate impact "is related to the job in question and consistent with business necessity." The statute also provides that the employers' "business necessity" defense shall be interpreted to "reflect the concepts * * * enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971) and in other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989)."

Elementary rules of grammar dictate that the phrase "prior to Wards Cove" embodied in the statute does not have the same meaning as the phrase "up to and including Wards Cove." Thus, the meaning of "business necessity" only embraces the Supreme Court decision "prior to Wards Cove."

Indeed, any notion that the Danforth compromise in any way codifies the Wards Cove business necessity standard also is contradicted by the legislative history of the administration's numerous but futile attempts to accomplish that very goal. During the past 2 years the administration repeatedly submitted to Congress legislation endorsing and codifying the Wards Cove definition of business necessity. One such legislative proposal was overwhelmingly defeated by the House of Representatives and other such proposals had so little support that they were not voted on by the full House or the other body.

Language to codify the Wards Cove definition of business necessity was introduced during the 101st Congress in House amendment 702, the Michel substitute. Its definition of business necessity—that "the respondent's legitimate employment goals are significantly served by, even if they do not require, the challenged practice"—virtually mimicked the Wards Cove formulation that a challenged practice "serve in a significant way the legitimate employment goals of the employer." That proposal was resoundingly defeated by a rollcall vote of 188 to 238.

An alternative legislative proposal to codify Wards Cove was submitted to the 101st Congress on October 21, 1990. In a written message accompanying the veto of the Civil Rights Act of 1990, the administration proposed "to codify the meaning of business necessity as used in *Griggs* v. *Duke*, 401 U.S. 424 (1971), and other opinions of the Supreme Court (1990 message, p. 20)." It is true that the phrase "to codify the meaning of business necessity used in Griggs * * * and other opinions of the Supreme Court" would have codified Wards Cove. However, that phrase also is markedly different from the phrase "* * * prior to Wards Cove * * *" which I embodied in the Danforth substitute.

The proposed legislation accompanying the veto of the 1990 act was never considered in either the House of Representatives or the other body.

The administration introduced H.R. 1375 during the 102d Congress in yet another attempt to codify Wards Cove. The bill once again defined business necessity to mean "the respondent's legitimate employment goals are significantly served by, even if they do not require, the challenged practice." Section 4 of the administration's section-by-section analysis accompanying H.R. 1375 expressly acknowledged an intent to codify Wards Cove: "the burden-of-proof issue that Wards Cove resolved in favor of defendants is resolved by this Act in favor of plaintiffs * * * on all other issues, this Act leaves existing law undisturbed". H.R. 1375 also was resoundingly defeated in the House by a rollcall vote of 162 to 266.

Fortunately, neither Congress nor the Courts must speculate about whether the "business necessity" defense embodied in the Danforth compromise repudiates the Wards Cove formulation. Senator DANFORTH has acknowledged that the phrase "related to the employment in question and consistent with business necessity" was taken verbatim out of the Americans With Disabilities Act which Congress enacted during the 101st Congress.

"Related to the employment in question and consistent with business necessity" is a "term of art" in employment discrimination law which numerous Federal courts and enforcement agencies have interpreted. Congress is familiar with those interpretations and I, together with others, agreed to support Senator DANFORTH'S compromise in large measure because of those interpretations of the phrase "related to the employment in question and consistent with business necessity." Upon examination, it is clear that such a formulation is more exacting than the administration supported but congressional rejected Wards Cove formulation.

The report of the House Education and Labor Committee on the Americans With Disabilities Act states:

* * * The legislation specifies that discrimination includes using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

As in Section 504, the ADA adopts an framework for employment selection procedures which is designed to assure that persons with disabilities are not excluded from job opportunities unless they are actually unable to do the job. The requirement that job criteria actually measure the ability required by the job is a critical protection against discrimination based on disability. Report of the Committee on Education and Labor of the U.S. House of Representatives, Americans With Disabilities Act of 1990, 101st Cong., 2d Sess., May 15, 1990, Rept. 101-485, Pt. 2, at 70-71.

The report also states:

Hence, the requirement that job selection procedures be "job related and consistent with business necessity" underscores the need to examine all selection criteria to assure that they not only provide an accurate measure of an applicant's actual ability to perform the essential functions of the job. Id. at 172.

Indeed, the final regulations on the Americans With Disabilities Act promulgated by the Equal Employment Opportunity Commission in July 1991, reaffirms those interpretations:

The purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job. It is to ensure that there is a fit between job criteria and an applicant's (or employee's) actual ability to do the job. Accordingly, job criteria that even unintentionally screen out, or tend to screen out, an individual with a disability or a class of individuals with disabilities because of their disability may not be used unless the employer demonstrates that that criteria, as used by the employer, are job-related to the position to which they are being applied and are consistent with business necessity.

Those interpretations of the employers' business necessity defense in the Americans with disabilities are consistent with the formulation of employers' business necessity defense embodied in the Danforth compromise.

In sum, no reasonable interpretation of either the words of S. 1745, the legislative history of the repeated defeat of the administration's attempts to codify Wards Cove, or the legislative history of the recently enacted Americans With Disability from which S. 1745's business necessity defense is taken supports the contention that the decision in Wards Cove is "alive and well." Griggs has withstood the test of time. Wards Cove has not and it should be allowed to rest in peace.

Mr. Speaker, I reserve the balance of my time.

Mr. GOODLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the compromise on S. 1745, the Civil Rights Act of 1991. Although the compromise is not a perfect one, and it would likely not be a compromise if it were, the agreement allows us to get beyond the political and legal disagreements that have dogged the Civil Rights Act since it was introduced 2 years ago and allows us to provide real and enlarged protections against employment discrimination to this Nation's workers.

When we considered this bill in the last Congress, I said that there was already enough agreement on what our civil rights laws should stand for that we could give proponents of what was then H.R. 4000, and is now H.R. 1, half of the loaf they were seeking. I am pleased that this compromise gives all employees that half of the loaf and more, while at the same time it diminishes the pressure on employers to make their work force match some statistical norm and it ameliorates the possibility of a litigation lottery.

The quota call that has defined this bill since its inception seemed pejorative to many, but it developed from some legitimate concerns that the definition of business necessity and the various burden of proof provisions would induce employers to unfairly consider race, color, religion, sex, or national origin in workplace decisions in order to avoid costly lawsuits. The compromise addresses this concern by eliminating a very burdensome and novel definition of business necessity and relying on the development of that term in the case law which includes concepts from Griggs, Watson, and Beazer, to name a few that employers are used to working with. The compromise also addresses the concern with the formulation in the original bill which allowed plaintiffs to lump employment practices together in alleging that an employer's hiring or promotion practices had a disparate impact by requiring discrimination claimants to identify the specific practice causing the disparity.

With respect to the litigation lottery that many feared would be the result of H.R. 1, the compromise takes several steps in the right direction. Many of the attorneys' fees provisions in the original bill that only benefited the lawyers, made conciliation and settlement of employment discrimination claims more difficult, and worked to the disadvantage of the true parties at interest, the victims of discrimination, have been removed. The possibility of unlimited damages no longer serves as a carrot for filing a lawsuit under this compromise, although, I admit that I have remaining concerns about the new remedial scheme it sets up, which goes far beyond the traditional labor law remedies of backpay and injunctive relief. I hope that my fears as to the possible repercussions of a damage remedy do not come to pass and that this does not start a domino effect with respect to every employment law on the books.

We also take the important first step in this compromise towards bringing the Congress under the umbrella of the coverage of the workplace discrimination laws protecting employees in every other sector of our economy. Although the compromise does not go as far as many would like, myself included, it does send a very telling message to those who are both burdened and benefited by our lawmaking that we will no longer be legislating in the abstract. We too will have to follow the laws, with all the good they work and all the baggage they carry, that we expect every other business in this Nation to abide by.

Mr. Speaker, I have only touched upon several of the larger issues that

we have been dealing with in the civil rights debate over the last several years. I believe that in this case, the legislative process has been an effective one. That process allowed concerns about the impact and effect of the proposed bill to be raised, and it created processes and avenues whereby those concerns were addressed. The result is that we have civil rights legislation before us that dramatically extends the protections and the remedies available to victims of workplace discrimination and that is truly a civil rights bill for all Americans. I rise in strong support of the compromise and ask my colleagues to do so as well.

□ 1510

Mr. BROOKS. Mr. Speaker, I yield 30 seconds to the distinguished gentleman from Oregon [Mr. AUCOIN].

Mr. AUCOIN. Mr. Speaker, this is a good bill, except for what the White House insists that it tell women. It tells women, like my young daughter, that discrimination based on sex is not as wrong as discrimination based on race.

It continues to give women a message that they are second-class citizens. That is not equality. That is not freedom, and to that extent it means that those of us in the Congress who care about women's rights, for us our work is not yet done.

The SPEAKER pro tempore (Mr. MFUME). The Chair recognizes the distinguished gentleman from Illinois [Mr. HYDE], the chairman of the Subcommittee on Civil and Constitutional Rights.

Mr. HYDE. Mr. Speaker, I gratefully accept the promotion.

I yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], and I hope the Speaker does not correct the RECORD.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to this compromise, which I do not think really addresses the issues that were presented in this bill.

Because the bill continues to treat employment discrimination cases as a tort lawsuit mode, we are going to have this economy become much, much less competitive as more and more money is spent on legal fees bringing cases to the jury. This is truly a lawyer's bonanza, and it is contrary to the program of civil litigation reform that the administration has been promoting correctly throughout the country to try to reduce the number of lawsuits, to try to reduce the amount of our economy that goes to lawyers's fees and to expert witness fees, and the like.

By throwing out the conciliation and mediation provisions in current law where the EEOC plays a lead role, we are turning every case of employment discrimination into a court suit.

Now, it is true that many of the frivolous cases will be thrown out by the jury, but it literally costs tens and even hundreds of thousands of dollars in lawyers' fees, expert witness fees, deposition fees, pretrial motions, trail briefs, motion expenses and the like, to get the case to the jury for its decision.

I am further concerned about the unconstitutionality of the sliding scale of damages that are contained in this bill. This is a violation clearly of the equal protection clause of the 14th amendment to the U.S. Constitution.

Why should someone who is in a medium-sized business who has been a victim of the same type of discrimination, who has suffered the same damages, be limited in the amount that they can recover vis-a-vis someone who has been victimized in a larger business?

I cannot in good conscience consistent with the oath that I took at the beginning of this Congress to uphold the Constitution of the United States vote for this kind of a sliding scale. The scale should be uniform, unlimited damages, zero damages, or some figure in between, but it should not have different strokes for different folks.

I would like to conclude my remarks, Mr. Speaker, by quoting with approval the concluding paragraph of an op-ed piece in the Wall Street Journal of Wednesday, October 30, 1991, by L. Gordon Crovitz, where he describes this bill:

> It won't take long for resourceful lawyers to pump this lawsuit cow for all the cash it's worth. Expect years of divisive cases pushing this bill's peculiar definition of discrimination. After all this, at least no one will be able to argue that litigation leads to harmony.

Mr. Speaker, this bill ends the recession in the legal profession. It does not help American business stay competitive, nor does it provide real relief for people who have been victimized by unlawful discrimination.

Mr. Speaker, I include the Wall Street article above referred to as follows:

[From the Wall Street Journal, Oct. 30, 1991]

BUSH'S QUOTA BILL: (DUBIOUS) POLITICS TRUMPS LEGAL PRINCIPLE

(By L. Gordon Crovitz)

Liberals always thought the key to racial and sexual equality is lawyers litigating for punitive damages, but President Bush at least used to complain about a "lawyers' bonanza." Maybe Mr. Bush thinks that enriching lawyers with a quota bill will reverse the recession for one industry, even if it's at the legal-fees-by-the-hour expense of all other businesses.

Not quite all other businesses. Senators understand the terrifying implications of the law they wrote well enough to deny their employees the right to sue them. Mr. Bush, despite his brave words about making congressmen abide by the law, gave them a pass here.

Senators yesterday devised ways to avoid the jury trials they plan for others. The George Mitchell-Charles Grassley compromise would let Senate workers appeal from internal procedures to a federal appeals court, but unlike private-sector workers they couldn't get jury trials or punitive damages.

Senators tried to justify their exemptions by invoking separation of powers, but the Constitution lists all the immunities: Congressmen can't be arrested while at or going to or from Capitol Hill (except arrests for treason, felony and breach of the peace), and they can't be sued for what they say on the floor of the Senate or House. There is no immunity for discrimination or sexual harassment. The first private-sector employer sued under this bill should bring an equal-protection clause defense arguing that it's been singled out as a defendant for not being Congress.

One reason Congress is so edgy about being sued is that this bill has little to do with what most Americans consider discrimination—intentional discrimination. The entire debate instead is about the lawyers' invention of disparate-impact analysis, which starts with the assumption that there is "discrimination" unless every job filled by every employer perfectly reflects—no less and no more—the available labor pool of women, blacks, Greek-Americans, Jews, Aleuts.

The Supreme Court tried in cases such as Wards Cove v. Atonio to avoid this hyperlitigious world by crafting clear defenses for employers. The justices ruled that plaintiffs must identify seemingly objective job requirements such as tests or educational requirements that excluded them. Plaintiffs would then have to prove that these factors had no significant relation to any "business necessity" of the employer. The civil-rights bill blessed by Mr. Bush reverses the burden of proof, adding insult to lawsuit by refusing to define business necessity.

This non-definition definition hints at the mischief of this bill, which ensures years of costly lawsuits as judges try to fathom what Congress meant by a bill that intentionally doesn't say what it means. The following section, entitled "Exclusive Legislative History" (even though Ted Kennedy immediately went to the floor of the Senate to give his own interpretation), is supposed to guide judges as they in effect write the law: "The terms 'business necessity' and 'job related' are intended to reflect the concepts enunciated by the Supreme Court in Griggs v. Duke Power Co. and in other Supreme Court decisions prior to Wards Cove v. Atonio." Under this non-standard the justices could simply re-adopt the constitutional protections they gave defendants. After all, they thought much of Wards Cove was simply a continuation of their Griggs analysis of disparate-impact cases. It was in a case decided before Wards Cove that the court insisted that "the ultimate burden of proof" must remain "with the plaintiff at all times."

No law can amend the Constitution to deprive parties of due process, so the provision depriving third parties of the right to challenge consent decrees likely remains unconstitutional. The bill also gives the justices a new reason to declare punitive damages unconstitutional: Damages for sexual harassment would increase with the irrelevancy of the size of the workforce, not with the heinousness of the offense. Harassment remains undefined.

Why did Mr. Bush cave? He must know that labor lawyers today are advising clients to avoid litigation by hiring by the numbers. The likeliest explanation is politics. There's probably no better motive for inserting politics into law than for a Republican president

to twist the law in ways he thinks will appeal to blacks, but does Mr. Bush think it's good politics to sacrifice legal principle for supposed racial ends? Judging by recent flipflops by the White House, the answer is yes. The quota bill is the latest tea leaf that for this administration, racial politics trumps law:

Mr. Bush this month instructed Solicitor General Kenneth Starr to withdraw a key argument in a brief he'd submitted to the Supreme Court. The question in U.S. v. Mabus is how much spending Mississippi must do to attract applicants to historically black public universities. Mr. Starr said the state needs to do more, but that separate but equal is a dead doctrine. "The idea is to end duplication, not to ensure it by ensuring that separate schools are in fact equal," he wrote.

Mr. Starr, who helped craft Dan Quayle's civil-justice reform proposals, warned about the litigation nightmare if the justices insist on precisely equal spending. He said this would invite "enormous and endlessly litigious undertaking to ensure that there are no longer any spending disparities."

This brief was filed in July, but in September a group of black college administrators lobbied Mr. Bush to disavow this legal argument. He sent the word to Mr. Starr, who on Oct. 10 filed a rare, perhaps unprecedented, withdrawal with the Supreme Court. "The time has now come to eliminate those disparities" in spending, Mr. Starr wrote. "Suggestions to the contrary in our opening brief," a footnote explained, "no longer reflect the position of the U.S." Team-player Starr, who often speaks of the importance of the unitary executive branch, quietly went along with this order from the boss.

Months before Lamar Alexander took over at the Education Department, the agency's top civil-rights official, Michael Williams, declared race-specific scholarships unconstitutional. One of Secretary Alexander's first acts was to put on deep freeze this legal opinion by a politically incorrect black lawyer.

Mr. William's legal analysis was a routine application of the 1978 Bakke decision and other cases prohibiting race-linked policies except to remedy specific past discrimination. Yet Mr. Alexander announced that race-based scholarships could continue while Mr. William's opinion was under review. No word on when, or if, a final decision will be reached.

Liberals in Congress bear the chief responsibility for the litigation madhouse this bill creates, but David Duke is likelier to make Mr. Bush bear the political costs. Clarence Thomas proved that all blacks do not bow before the interest groups that insisted on this bill. It's doubtful that anyone thinks better of Mr. Bush for breaking his no-new-quota pledge.

It won't take long for resourceful lawyers to pump this lawsuit cow for all the cash it's worth. Expect years of divisive cases pushing this bill's peculiar definition of discrimination. After all this, at least no one will be able to argue that litigation leads to harmony.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Washington [Mrs. UNSOELD].

Mrs. UNSOELD. Mr. Speaker, I wish to thank all the chairmen and Members of this body who have held a steady course to bring us to this day when I could rise in order to support the civil rights compromise.

This legislation moves the Nation closer to equity in the workplace, closer to equity in employment, and closer to equal opportunity.

Finally, the President has agreed that we not only need to reverse recent Supreme Court decisions that weaken our employment discrimination laws, but for the first time we also need to establish laws that allow hard-working Americans to fight for lost wages and damages when they are victims of job discrimination on the basis of sex, religion, or disability.

This bill also sends a strong message to the U.S. Supreme Court that enough is enough. By emphatically overturning five key 1989 Supreme Court decisions that turned back the clock on civil rights, we in the Congress are showing that we are ready to move forward again. We are not there yet, but we are moving forward.

Mr. GOODLING. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Speaker and my colleagues, the compromise is just that. It is a compromise which will find no one totally happy, and yet I believe the compromise in front of us today is an important middle ground that allows us as a Nation and as a society to move onward in the area of employment discrimination, and I rise in support of the legislation in front of us.

Those of you who recall my involvement in this issue in the past know that I have been motivated most of all by the remedy section and the reality that this bill would move what was to be a resolution of employment discrimination from reconciliation to court litigation. That opportunity still stands because, frankly, I was in the minority of those who believed that we could find remedies outside of jury trials as the best solution; but I do believe there are four points in this bill that need to be mentioned in this regard to give us a sense of history of the compromise that is in front of us and where I think we want to go as a nation in this regard.

First of all, the whole issue of quotas and disparate impact has, I think, been properly resolved by neither side being able to totally declare victory and to allow court interpretation of court rulings to stay within the court and not to be done in a legislative body.

Second, I think that we have made great progress when we have in the area of identifying those specific employment practices which would be the reason for which we would hold a business as guilty of an employment discrimination and a disparate impact, a requirement under this bill that that specific employment practice must indeed be identified unless proof can be made that that is just impossible to do.

The third area that I would suggest brings about a compromise is that where the bill before us includes damages; I have to tell you that this is truly a compromise between what was the President's original proposal and the original bill before the House.

The fact is that we have set up four different and specific categories of damages. We have capped those damages in all four areas and we have limited those damages to only intentional discrimination, and in so doing we combine both the punitive and the compensatory, and you recall that was not the case before.

□ 1520

You will recall that was not the case before. But I think the most important provision in this bill, from my perspective, is the fact that section 9 of the original bill, which said that no consent order or judgment settling a claim under this title, or no dismissal of a claim, would be effective unless the parties or their counsel attest to the court that a waiver of all or substantially all of attorney's fees was not compelled as a condition of settlement.

That section is not in the bill before us. So a major incentive for plaintiff attorneys to create discrimination litigation has been eliminated.

I think this bill is a compromise.

Mr. Speaker, I encourage all to support it.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. WASHINGTON], a member of the Committee on the Judiciary.

Mr. WASHINGTON. I thank the gentleman for yielding this time to me.

Mr. Speaker, I requested permission to revise and extend so that I may put into the RECORD at this point before the day is over the record vote on the LaFalce amendment and on the bill in 1990 and on the bill in 1991, when it was a quota bill.

Where did the quotas go? They swam upstream like red herrings often do. Quotas were never in H.R. 4000. It was red herring. Quotas were never in H.R. 1 this year; it was a red herring. Quotas were not in the bill that the President vetoed; that was a red herring.

Quotas were never the subject of honest intellectual discussion when Mr. Sununu and Mr. Gray found it necessary to bully the business roundtable into breaking off negotiations; that was a red herring.

Quotas did not create a lawyers' bonanza; that was a red herring.

How then do we cook a red herring? We can use salt and pepper and cajan sauce, but unless we are going to eat it sushi style, we have to use some heat. And the heat has been applied in the form of David Duke. That was the heat. That is why it is no longer a quota bill, because David Duke turned up the heat. David Duke took the heat off the quota argument.

Quotas made David Duke, and now the chicken has come home to roost.

Dr. Frankenstein, meet your monster, David Duke; maybe you will find that herring tastes like crow.

Mr. HYDE. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Connecticut [Mr. FRANKS].

Mr. GOODLING. Mr. Speaker, I would like to yield 2 additional minutes to the gentleman from Connecticut [Mr. FRANKS].

The SPEAKER pro tempore (Mr. MFUME). The gentleman from Connecticut [Mr. FRANKS] will be recognized for 3 minutes.

Mr. FRANKS of Connecticut. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise today in strong support of S. 1745, the compromise civil rights bill. I am pleased that after months of partisan bickering. gamesmanship, and missed opportunities, an agreement has been reached.

There has been too much talk within the beltway about who are the winners and losers politically in these compromises. We have all differed on what would be the best method to achieve true civil rights for every American.

Most of us are sincere in our commitment to ensuring that all Americans can live and work in a country where race, religion, sex, and political persuasion are not stumbling blocks to pursuing one's dreams.

Mr. Speaker, this compromise makes every American a winner. The only losers are those who continue to peddle hate and division.

When we first considered H.R. 1, I was one of the 158 Members who opposed the bill.

Mr. Speaker, I realized that the bill was not a fair civil rights bill. It was clear to me that, had H.R. 1 become law, it would have established a system that would have compelled businesses to hire by the numbers, to create quotas, to avoid an avalanche of lawsuits and, in some instances, certain bankruptcy.

In order to avoid litigation, businesses would protect themselves by insuring that the composition of their employees properly reflected the local labor pool regardless of the employees' abilities. H.R. 1 would have forced businesses to hire by the numbers. That is not what this country is all about. That is why I am a true supporter of S. 1745, because it is a true civil rights bill of which we can all be proud.

I encourage my colleagues to support this bill.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Ohio [Ms. OAKAR].

Mr. STOKES. Mr. Speaker, will the gentlewoman yield?

Ms. OAKAR. I yield to the gentleman from Ohio, the dean of my delegation.

Mr. STOKES. Mr. Speaker, I thank the gentlewoman for yielding, and I rise in strong support of the bill.

Mr. Speaker, I rise in support of the Civil Rights Act of 1991. I commend the leadership of both Houses of Congress, for their determination to pass this important piece of legislation. The 1991 Civil Rights Act is crucial to our efforts to end discrimination in the workplace. This legislation attempts to strengthen the principles contained in the Civil Rights Act of 1964—that no person, male or female, should be denied a job, career advancement, fair salary, or be harassed at work, because of race, sex, national origin, or religion.

In 1989 the Supreme Court rendered decisions on five civil rights cases which essentially granted employers the right to discriminate without fear of reprisals. The decisions passed down in these cases made it more difficult for victims of discrimination to prove their claims and easier for employers to escape liability. These decisions have made it necessary for strong legislative action to strengthen and restore remedies available for the victims of discrimination.

Just as this administration has attempted to use the highest court in the land, to turn back the hands of time on civil rights and equality, we must now turn back the hands of time on discrimination. We must reestablish the standards established in Griggs versus Duke Power Co., and in other Supreme Court decisions prior to Wards Cove Packing versus Atonio. On June 5, 1991, this body voted 273 to 158 to approve a revised version of H.R. 1, which would have overturned these Supreme Court decisions, but the president vetoed the bill and the Senate failed to override the President's veto by only one vote.

Last year and for much of 1991 the President launched a public relations smoke screen over H.R. 1 by labeling it a so-called quota bill. Now the President is ready to embrace what is essentially the same bill with limited compromise measures. The fact is, this civil rights bill has never been a quota bill. It was not a quota bill last year, it is not a quota bill this year, and will not be a quota bill when passed by this body or when it becomes law. Sadly, the President's problem with H.R. 1 was never quotas, the problem was politics. Those politics were the same divisive, racial politics that in 1988 gave us Willie Horton, that in 1991 replaced Thurgood Marshall with a black conservative and have now spawned the climate that gives us David Duke. So, I am pleased to see this President and his administration now abandon their racial politics and accept a measure that should have become law last year.

Mr. Speaker, I would like to comment on several unique aspects of the bill. I cite the provisions in the bill which authorize the establishment of a Glass Ceiling Commission to study the underrepresentation of women and minorities in executive, management, and senior decisionmaking positions. The Government and the private sector have been particularly remiss in creating and allowing artificial discrimination barriers to advancement at the same time that they have lifted entry-level opportunities. Some private sector fields, such as transportation, employ virtually no senior-level managers. Some Government agencies have the same practices. I have worked alongside many of my distinguished colleagues in the House to help create an equitable total work force environment in many of our Federal agencies such as the CIA, FBI, NSA, NASA, and others. This commission, hopefully, will help us address this pervasive problem.

I also applaud the extension of civil rights protections to congressional staff. I particularly commend by friend and colleague, the senior Democratic Senator from Ohio, JOHN GLENN, for being the true founder of this effort to bring civil rights protections to our employees. JOHN GLENN began this effort 14 years ago, in 1977, and it is his original legislation that is the model for the protections that appear in this bill.

Mr. Speaker, let me conclude by saying that enactment of the Civil Rights Act of 1991 is critical to our efforts to end discrimination in the workplace, and to restore and strengthen the remedies available for the victims of discrimination. This bill makes it clear that employment decisions motivated by prejudice are illegal; it forces employers to justify employment practices that operate to exclude minorities and women disproportionately; and it prohibits racial harassment and other forms of discrimination during any phase of an employment contract.

I believe that the Civil Rights Act of 1991, adequately addresses the problem of employment discrimination. I encourage my colleagues to join me today in supporting this measure.

Mr. CLAY. Mr. Speaker, will the gentlewoman yield?

Ms. OAKAR. I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Speaker, I thank the gentlewoman for yielding, and I rise in support of the bill.

Mr. Speaker, I rise in support of S. 1745 to amend the Civil Rights Act of 1964, to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, and to clarify provisions regarding disparate impact actions.

This legislation marks the end of a 2-year struggle to reaffirm this Nation's commitment to the principle of equal opportunity. This struggle was made necessary by a Supreme Court that has demonstrated a callous disregard for the realities faced by millions of Americans. It has been prolonged by a President who, until recently, has sought to use the issue of civil rights as a weapon to divide the Nation for short-term political gain at the expense of long-term national interest. It has finally been ended as a result of the concerted, bipartisan efforts of Members of the other body. That achievement is a victory for statesmanship over politics, for justice over inequity, for the future over the past. I commend Senator DANFORTH, Senator KENNEDY, Senator MITCHELL, Senator DOLE, the administration, and all who took part in this accomplishment.

Unfortunately, as significant as this accomplishment is, it does not fully or sufficiently address one of the crucial injustices addressed by H.R. 1. The most troubling aspect of S. 1745 is its failure to provide full equity for women, religious, and ethnic minorities who are victimized by intentional discrimination. In my view, the cap that has been placed by S. 1745 on the ability of women and others to obtain damages under title VII is unnecessary, unfair, and unjust. If we believe in justice for all, it remains for the Congress to perfect the

remedies we would afford these individuals. If the obstinacy of the White House precludes us from addressing this issue today, it is my sincerest hope that this inequity be addressed as soon as possible.

In other respects, however, S. 1745 accomplishes the same ends sought by H.R. 1. This legislation amends section 1981 to provide that "the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship". It thereby fully and completely overturns Patterson versus McLean.

This legislation provides that,

* * * an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title * * * when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of that system.

Lorance versus AT&T Technologies and its progeny are thereby overturned.

This legislation provides that "an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice". Price Waterhouse versus Hopkins is thereby overturned.

This legislation expressly overturns Martin versus Wilks by providing that consent decrees may not be challenged

* * * by a person, who prior to the entry of the judgment or order * * * had—actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and a reasonable opportunity to present objections to such judgment or order; or by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation * * *.

Wards Cove Packing Co. versus Atonio is not only expressly overturned, but clear statutory language has been included addressing the grievous aspects of that decision. Specifically, S. 1745 provides that "if a party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice." This overturns the wholly unreasonable position taken by the Supreme Court that the complaining party demonstrate that each individual employment practice causing a disparate impact regardless of whether the respondent's decisionmaking process was capable of separation.

S. 1745 provides that a disparate impact is established if a complaining party demonstrates an employer uses an employment practice causing disparate impact on the basis of race, color, religion, sex, or national origin "and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity." Although conflicting statements have been made regarding the status of the Wards Cove formulation of business necessity, the statutory language clearly and expressly provides that a challenged practice must be "job related for the position in question". In addition, an employer engaging in an employment practice shown to discriminate on the basis of race, color, religion, sex, or national origin has the clear burden of justifying the need for such a practice.

Finally, by providing for expert witness fees and extending the coverage of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990 to overseas Americans, this legislation overturns West Virginia University Hospital versus Casey and Equal Employment Opportunity Commission versus Arabian American Oil Company.

Enacting S. 1745 is the only means of restoring the fair balance between employers and employees that existed for 25 years prior the Supreme Court's 1989 term. The struggle to come even this far in the battle for civil rights proves once again the need to ensure the vitality of our civil rights laws.

We have been reminded that though our country has been committed to the ideal that all citizens should have an equal opportunity to succeed to the extent of their God-given abilities, we have yet to live up to that ideal. Discrimination remains alive and well. The continuing need to vigilantly protect against discrimination will end only when cultural habits, hearts, and minds change and people no longer deny other people opportunity simply because they are black, brown, or of a different gender, religious group, or ethnic heritage.

Today's moral and political climate has made it quite clear that the Congress must stand guardian of civil rights. Our courts once led the fight for civil rights. Recent decisions such as Wards Cove and Patterson versus McLean, however, are reminiscent of Dred Scott and Plessy versus Ferguson. As Justice Blackmun eloquently stated in his dissent in Wards Cove, "One wonders whether the majority [of the Court] still believes that race discrimination—or more accurately, race discrimination against nonwhites—is a problem in our society, or even remembers that it ever was." We cannot afford to play the race card for partisan gain. This country already has shed more blood over the issue of race than for any other cause. The wounds of slavery are with us to this day. No short-term political victory is worth the inevitable price such tactics will exact. We must continue the fight to make justice and equality a reality. Passage of this bill is politically right and morally imperative.

Ms. OAKAR. Mr. Speaker, I am going to support S. 1745, but I want my colleagues and the American people to know that the original H.R. 1 bill, as proposed by the gentleman from Texas [Mr. BROOKS] and the gentleman from Michigan [Mr. FORD] and others, which came out of the committees before it went to the Committee on Rules, was a much fairer bill. This bill, in a way, should not be called civil rights for women. They ought to strike "women" although it does protect women to a degree; but it does not go all the way.

Let me give you an example: H.R. 1 had the Pay Equity Technical Assistance Act in it. This bill does not; they took that out.

H.R. 1 allowed for the extension of the statute of limitations that especially affects women who are sexually harassed from 180 days to 18 months; it gives them time to evaluate the situation, et cetera. S. 1745 went backward to the 180 days.

But the thing that gets me the most angry is the fact that, with respect to punitive damages, this bill has caps for women, only, and handicapped and religious minorities.

In other words, if you are a Catholic, you are a religious minority, so your punitive damages could be capped. But for women, it is another case. Now, if that is what made the bill better, then I think women should be outraged. But I think we made some gains.

So, in fairness to the individuals on this side of the aisle, Chairman FORD and Chairman BROOKS and others, who worked so hard to get an agreement, I am going to support it. But I want everybody to know that the Senate bill is a much worse bill.

Mr. GOODLING. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. I thank the gentleman for yielding time to me.

Mr. Speaker, it is about time. If Congress had been willing to stifle the rhetoric, we could have passed this bill months ago and millions of Americans would now be enjoying its protections.

But, as with so many issues, Congress had to play political football games while our constituents waited for us to act. I am proud that the political games have failed. I am proud that this bill is on the floor today—a bipartisan bill that Members of this body can and should support.

Mr. Speaker, it still needs work. Business is guilty until proven innocent; that goes against our system. It is wrong, the inequities for females is wrong. We can address these issues and other issues in the upcoming months.

I am disappointed that we in the people's House have to wait for the Senate to act. I am disappointed that we in the House did not show the leadership to move on a bipartisan civil rights bill that the President could sign months ago.

Mr. Speaker, the freshman class, both Republicans and Democrats, have been critical of the leadership, but today, gentlemen, I think I can speak with all my freshman allies that we laud you and God bless you, our leadership on both sides of the aisle for your leadership on this particular issue.

Mr. Speaker, Congress today will approve a civil rights bill that will protect the rights of all Americans in the workplace without resorting to quotas. By passing this bill, Congress will ensure that Americans of all backgrounds are treated fairly and equitably.

Mr. Speaker, two of the people that I most respect on this House floor, GARY FRANKS and JOHN LEWIS, I look forward to walking down the aisle in support of the civil rights bill of today.

For the skeptics out there, this bill is a vast improvement over H.R. 1. The bill before us today is a fundamentally different bill. It is no longer a bonanza for lawyers.

Attorneys fees and expert witness fees will be dealt with responsibly. Standards for disparate impact are clarified. Race norming is abolished. Mixed-motive cases will be dealt with in an equitable manner, and a sound compromise has been reached on the issue of consent decrees.

□ 1530

Mr. Speaker, I believe this is landmark legislation. This bill is in the great tradition of expanding the statutes of this country.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. ORTIZ] for the purpose of a colloquy.

Mr. ORTIZ. Mr. Speaker, does section 102 of S. 1745, as amended, repeal the Supreme Court's holding in Saint Francis College versus Al-Khazraji, and, do you agree that it is sufficient to allege discrimination based solely upon national origin to state a valid cause of action under section 1981?

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. ORTIZ. I yield to the gentleman from Texas.

Mr. BROOKS. As the Judiciary Committee reported on page 27 of the House Report No. 102–40, part 2, no repeal of the case you mention is intended by this legislation, and alleging discrimination based solely upon "national origin" is sufficient to state a valid cause of action under section 1981.

Mr. ORTIZ. I thank the distinguished chairman of the Judiciary Committee.

Mr. HYDE. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. HOUGHTON].

Mr. HOUGHTON. Mr. Speaker, I rise in support of the Civil Rights Act of 1991.

Mr. Speaker, I would like to throw myself into this debate full force because I am so in favor of this compromise, but blessedly I will refrain from doing that. Suffice to say that this is a good bill, it is a fair bill, we know the facts, we have argued it ad nauseam, and I hope we all support it.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES of Illinois. Mr. Speaker, I rise today to reluctantly speak in support of the compromise version of H.R. 1, the Civil Rights Act of 1991. I am apprehensive in supporting this bill because when it comes to issues of equality for women and minorities we are always forced to compromise. During last year's civil rights negotiations, this bill was revised, compromised and rewritten and still, the President vetoed it. However, now I am told that the President has decided that this bill is no longer a quota bill and will sign it. It seems that the tide has changed in this country, and it is now fashionable to support civil rights.

I have concerns about this bill because it forces me to prioritize discrimination, and I should not be presented with such a choice. If an employer discriminates against a woman or a member of a racial minority, that employer should be penalized with damages that are not capped. Nevertheless, I am inclined to vote for this bill, even in light of its weaknesses, because it provides some redress for women and minorities.

Between now and the year 2000, 91 percent of the new work force will be minorities and women—the very people who have been victims of discrimination in the past and, all too often, still are denied the opportunity to make their fullest contribution to American life. In the competitive new world order of the 1990's, when America's destiny depends on bringing out the best in all our people, it is more important than ever to continue America's progress toward wiping out discrimination.

I must give thanks to the David Duke phenomenon which has finally awakened the President into agreeing to this civil rights bill. Now that he has agreed, we must seize a higher moral ground because our survival as a free democratic nation is at stake.

I urge my colleagues to vote yes and restore and strengthen basic civil rights in this country. We cannot allow the clock to be turned back. All Americans deserve the right to equal employment opportunity.

Mr. GOODLING. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Wisconsin [Mr. KLUG].

Mr. KLUG. Mr. Speaker, I yield to the gentleman from New York [Mr. MCGRATH].

Mr. MCGRATH. Mr. Speaker, I rise in support of the Civil Rights Act of 1991. I strongly believe in equality of opportunity for all Americans, regardless of race, religion, sex, or national origin and am pleased to support the compromise bill. As civil rights legislation made its way through Congress last year and again early this year, I advocated the drafting of legislation which strengthened employment discrimination law while preventing the institution of quotas, and I am pleased that an initiative achieving this balance has come before us for a vote.

When the House voted on civil rights legislation in the 101st Congress and again earlier this year, had qualms regarding the possible institution of quotas which were not allayed by the legislation finally passed by the House. Therefore, I worked for constructive changes in this legislation and, earlier this year, I became an original cosponsor of the Michel alternative to this legislation which was endorsed by the administration. I am heartened to see that the compromise has taken into account the well-founded quota concerns I share with many of you and incorporated some of the Michel alternative's provisions. Like the alternative for which I previously voted, the compromise significantly strengthens employment discrimination law while preventing the placement of employers in a position where they would be compelled to resort to quotas or other unfair preferences. I oppose quota systems in the civil rights arena because they subvert the intent of affording all people equality of opportunity so that those with comparable capabilities or qualifications will be on an equal footing. The compromise satisfactorily addresses my quota concerns as it does those of the President's and many of my colleagues on the floor today.

Throughout my career I have been proud to support a variety of laws aimed at combating hate crimes, employment discrimination, and other forms of prejudice. The compromise civil rights bill now before us works fairly and equitably toward such a positive impact. Passage and enactment of this measure will enable us to make further decided inroads towards the elimination of prejudice and discrimination. While this bill unfortunately will not change the minds of those who harbor prejudice against ethnic groups or any other segment of our society, it will protect the public from discriminatory acts stemming from such beliefs.

I urge my colleagues to join me in voting to support the Civil Rights Act of 1991. Such a vote will let us register our opposition to bigotry and other brands of discrimination and our determination that all Americans will have an equal opportunity to succeed by taking constructive action to ensure that Americans will be judged by their capabilities and qualifications.

Mr. KLUG. Mr. Speaker, I rise in support of the bill before the House and I congratulate all those individuals, especially the President, who have come together to make this agreement possible.

In 1983, when I was a reporter in this city, I was sued for libel over a series of stories I did on sexual harassment in the Federal Government. Incredibly, the head of the EEOC office which was supposed to protect the victims of sexual harassment had himself a long history of sexually harassing his own employees.

He sued me because of the stories I reported. And a jury of course found in my favor because I had reported the truth.

My memory of those stories, however, is not of the lawsuit and the trial, but instead of the 14 women whose lives had been shattered by the experience. Women who were secretaries and women who were lawyers all reacted violently to the abuse. Some became physically sick. Others were left with deep emotional scars.

The sexual harasser could have his day in court because a reporter had described his offenses to the public, but his victims had absolutely no way to

punish and seek justice against him. I am glad today to see that victims of sexual harassment can finally get long overdue relief in our Nation's courts.

I am also relieved that both sides of this controversy can finally drop the politics of division. Nobody has gained by it—either to try to torpedo this bill or to try to make the case for it.

I think that everyone who has participated in this process—Members of Congress, the President and members of his administration, and the lobbying community—should ask themselves if they haven't done more to exacerbate those divisions, and stoke that anger, than they have to strengthen the links of community and mutual respect that hold our country together. If we make the American workplace a battleground upon which to settle competing claims to preferential treatment, or a field upon which to play the politics of envy, we do no service to America or her people.

Unfortunately, Mr. Speaker, it may take longer to heal the wounds which this long and twisted debate has opened than it took to expose them. I hope that with our votes today we will at least begin that process.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Kentucky [Mr. MAZZOLI], a member of the Committee on the Judiciary.

Mr. MAZZOLI. Mr. Speaker, I thank the gentleman from Texas [Mr. BROOKS] for yielding the time, and I salute him, and the gentleman from Michigan [Mr. FORD] and the gentleman from Illinois [Mr. HYDE] and the gentleman from Pennsylvania [Mr. GOODLING] for coming to the floor with this bill.

Mr. Speaker, I rise in support of the bill. This is not a perfect bill, and we have heard its flaws and its shortcomings. On the other hand, I think it is certainly a tremendous improvement over anything we have to date and it ought to pass.

This has been odyssey. The odyssey began a year ago when this Chamber passed, as did the other Chamber pass, a civil rights bill. It was vetoed by the President. We could not override the veto. The odyssey resumed this year when this Chamber passed another bill which led to negotiations which have produced this bipartisan compromise.

Mr. Speaker, that odyssey, which began over a year ago, ends today with the passage of this bill. I think America is better off for it, the workplace is less unfair because of it, and I think this has been a positive step forward.

I rise in support of the bill and urge this House to support this bill strongly.

Mr. HYDE. Mr. Speaker, I yield 30 seconds to the distinguished gentleman from New York [Mr. WALSH].

Mr. WALSH. Mr. Speaker, I am very proud to state that I had a small part in helping the Republican side develop this compromise. I rise in very strong support of this bill which guarantees that the rights of all individuals on the job in this country will be protected, not only women, not only African-Americans, not only those with disabilities, but all Americans.

□ 1540

Mr. Speaker, this is good work that has been done, and I urge all my colleagues to support it.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to our distinguished colleague, the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Speaker, I, too, rise in commendation of the chairmen, the gentleman from Michigan [Mr. FORD], the gentleman from Texas [Mr. BROOKS], and the ranking members for their leadership in bringing this legislation to the floor. I rise in strong support of it. Unfortunately, it is long overdue.

I am pleased that the President has finally seen the light and the wisdom of coming around and supporting this bill. I do have two concerns about it, and I think it is a prime example of saying we have to look at how far we have come on this bill and also we have to look to see how far we have to go. We have to go some distance yet in removing the caps on damages that women may sue for in sexual harassment and discrimination cases, and we must resolve the differences over the Wards Cove case.

I want to commend the Speaker for his commitment to move with legislation to resolve these inequities and in doing so enable me to be able to support this bill. Again I commend the chairman and the ranking members for bringing the legislation to the floor. I am very proud to support it in light of the support the Speaker has pledged to address the inequities contained herein.

Mr. Speaker, over the last few years the Supreme Court has passed down rulings making it more difficult for individuals to prove discrimination cases. It is because of these rulings that Congress has been working to pass a new civil rights bill that would reaffirm an individual's rights to make discrimination claims. One of the cases that was the impetus for a new civil rights bill was Wards Cove Packing Co. versus Antonio.

Charges were brought against Wards Cove Packing Co. because of their alleged discrimination against Asian-Americans including Filipinos and Native Alaskans. By exempting Wards Cove Packing Co. from this civil rights legislation, Congress is denying the plaintiffs in this case their right to pursue their claims of discrimination. Through this exemption, Congress is telling the workers of Wards Cove Packing Co. that they are not deserving of the same rights as the rest of America and that Congress puts the interest of Wards Cove's owners before the interests of Wards Cove workers.

Mr. Speaker, this is wrong. Congress has acted to end racial, religious, ethnic, and gender discrimination by advancing this bill, but then it includes this horribly unjust Wards Cove exemption.

Mr. Speaker, this is unfair to all Asian-Americans and Native Alaskans and I am pledging today to work in Congress to ensure that this exemption does not stand.

Mr. Speaker, I rise today to express my concern about the limits placed on damages that women can receive for sexual harassment and discrimination cases. I am discouraged that we can allow sexual harassment cases to be judged on the basis of the size of the business a woman works for and not for the seriousness of the crime. Women must be allowed to receive what they deserve in damages and not have an arbitrary limit placed on the damages. This provision was obviously the sacrificial lamb for this compromise and women were sacrificed.

Sexual harassment, or discrimination in any form, is a very serious offense and must not be tolerated. Women must not be discouraged from coming forward and condemning such behavior. Yet the effect of the caps on damages is that women are discouraged from speaking out because their problems are not worth the same amount as others are worth under the law simply because of business size. Women's rights have been compromised in this bill and we must not let American women think we will allow it.

Mr. Speaker, this arbitrary limit gives me serious questions about the principle that individual rights apply equally to everyone. I urge my colleagues to continue to work to repeal these limits or caps and allow women their due.

Mr. GOODLING. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, I take this time to merely say "thank you" to the staffs on both sides of the aisle. While the Members did a lot of work, the staffs spent hours and hours and hours beyond what we spent, and they should be congratulated for their efforts.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. HUGHES], a distinguished member of the Committee on the Judiciary.

Mr. HUGHES. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in strong support of S. 1745, the Civil Rights Act of 1991.

This is not a perfect bill, but certainly its flaws are significantly outweighed by its merits. I urge my colleagues to support the bill.

Mr. Speaker, I rise in support of S. 1745, the Civil Rights Act that is before us today.

This bill is not a perfect bill by any means, but its flaws are significantly outweighed by its virtues. Moreover, I doubt seriously that further improvements will be made in the current political environment.

Under the compromise before us today, arbitrary limits that may or may not fall short of the actual costs of discrimination to victims have been imposed. While I supported limiting punitive damages, I do not understand why the President sought to limit the compensation available to women, the disabled, and religious minorities for the actual cost to them of

discrimination. These limits are especially hard to understand when one realizes that there are no limits on damages for victims of racial discrimination.

Nevertheless, this bill contains several provisions that were taken from H.R. 1 that commit this Nation to hiring and advancement by merit. It bans adjusting employment test scores for race, color, sex, religion, or national origin, restoring fairness and removing the stigma that sometimes stemmed from race norming.

In cases involving disparate impact violations, here too the bill emphasizes merit, just as H.R. 1 did. In both cases, the only place for the use of statistics is in evaluating hiring or promotion criteria that are not related to doing the job. Any employers who hire by merit and keep simple records to prove it have no need to fear law suits, regardless of the composition of their work force.

If American employers respond to this provision by hiring mediocre employees according to group quotas, we are in serious trouble. The quota arguments were and are, based on the assumptions that judges will not throw out frivolous suits and that employers will not be able to convince juries composed of American citizens that they hired the best person for the job.

These arguments are not arguments against the bill, they are arguments against our judicial system. I have faith in the fairness of the American public, and I urge my colleagues to support this bill.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. BENNETT], a distinguished veteran of World War II and the second ranking Member of the House of Representatives.

Mr. BENNETT. Mr. Speaker, I wish to extend my congratulations to the committees that have handled this bill, and I rise in support of the bill.

The greatest thing that has happened since I have been in Congress for 40 years has been the improvement of the situation in civil rights, and I am glad to have had a part to play in it.

Having said that, I would say that although I am strongly for this and I hope it passes because I do not want anything to disturb what is good in it, I want to say that I think it is a shame that we have not addressed this civil rights issue as to Congress itself. In my opinion, there is no legal reason why Members of Congress cannot be covered like everybody else. I think that is a smokescreen. I realize that the people who raise it probably believe it, but I do not think there is any constitutional reason why Members of Congress cannot be involved in this civil rights legislation as well as everybody else.

So I hope that in the not too distant future Congress can eliminate the exemption we have created for ourselves, not only in this bill but in other bills where we have exemptions for Congress.

Mr. HYDE. Mr. Speaker, I yield myself the balance of my time.

Mr. GOODLING. Mr. Speaker, I yield 1½ additional minutes of our time to the gentleman from Illinois [Mr. HYDE].

The SPEAKER pro tempore (Mr. MFUME). The gentleman from Illinois [Mr. HYDE] is recognized for 7 minutes.

Mr. HYDE. Mr. Speaker, may I also compliment the staffs of both the Committee on the Judiciary and the Committee on Education and Labor, the minority and majority staffs. I think they have made a knowledgeable effort and have been of immense help, particularly Alan Coffey and Kathryn Hazeem of our minority staff. They have been indispensable.

This is a compromise, and like all compromises, it is not perfect. It is far from perfect, but it is acceptable and infinitely preferable to H.R. 1, the original civil rights bill that we passed last June.

This compromise is driven by historical context. There are two elements that we have built on. One is Griggs versus Duke Power, the 1971 case that initiated the then novel concept of disparate impact a theory that said one could discriminate against a prospective employee unintentionally. That notion was created by the Supreme Court. It was judicial legislation that we have lived with for 20 years, and it is now a given.

In addition, the defense of business necessity was created by the Griggs case. It permitted an employer to defend his judgment in hiring "A" and not "B" because it was necessary under so-called business necessity. The court defined "business necessity" as a manifest relationship to the employment in question.

Secondly, the other given that we have lived with for many years is a 1972 case, Runyon versus McCrary, interpreting 42 U.S.C. section 1981. A Reconstruction era statute, section 1981 provided jury trials and unlimited damages for racial discrimination. The Runyon case opened up that post-Civil War statute to all sorts of cases involving racial discrimination, including employment contracts.

We have lived with these court decisions for 20 years, and, we build on them in our attempt to reach modern civil rights legislation.

Now we leave Wards Cove versus Antonio, which was decided in 1989, and said that the burden of proof in disparate impact cases rests with the plaintiff. So, he who alleges must prove his case. That is traditional in our jurisprudence. The Court went on to say the plaintiff must prove with particularity which hiring practice of the employer discriminated against him. That is what Ward's Cove did, and that is what would have been reversed by H.R. 1, as we passed it last June.

In the compromise we consider today, we reverse Wards Cove to the extent that the burden of proof or the burden of proceeding, whatever we choose to call it, has passed to the employer. He must justify whatever hiring practice he has used to distinguish one employee from another. But, in addition, we have required in this compromise that the plaintiff must identify the specific hiring practice that he alleges discriminated against him.

So now we have gained from the compromise what was not in H.R. 1, and that is what makes this a nonquota bill and made H.R. 1 a quota bill. These are the two things we have gained: the requirement that the plaintiff identify the particular hiring practice that caused the alleged discrimination. Therefore, the employer can defend himself, not by having to prove a negative about every hiring practice he may have had, but to defend the one which allegedly caused the discrimination. And second, we have taken the definition of "business necessity" which H.R. 1 garbled and mangled and obfuscated until it was meaningless, and we have returned it to the language of Griggs, "a manifest relationship to the employment in question." So now the employer has a fighting chance of defending himself against charges that he has discriminated.

□ 1550

Now, this compromise, as I say, corrects that, through the requirement that the plaintiff identify the specific or particular hiring practice. Now, the utility of the defense of business necessity makes this a very worthwhile compromise.

However, I am troubled that we are imposing a tort system, with jury trials, on labor relations. Heretofore, labor disputes between employer and employee have been administratively resolved, mediation, conciliation, the EEOC, attorney's fees, back pay, and injunctive relief. Now we are pushing that aside for intentional discrimination, and we are imposing a tort system.

This is where the lawyers' bonanza comes in. Anyone who knows anything about litigation understands the problems that medical malpractice litigation has brought to the medical profession. The profession has been brought, if not to its knees, certainly to a crouched position. Product liability cases, similarly, have wreaked havoc on the insurance industry and business. But the lawyers go on forever. God bless lawyers. They are the survivors.

Now, that is a shame, but we are stuck with it, and this is a compromise. So, as Jane Ace used to say in radio years ago, you take the bitter with the better.

Now, comes Price Waterhouse, the mixed motives case. That is where someone does not get a promotion for a number of reasons, but among them is a bad reason, a discriminatory reason, maybe a racial reason. Under H.R. 1, if a discriminatory motive was even a part of the reason on the decision, you got socked for big damages.

Now, unless you can prove the discriminatory motive was the actual reason for the decision and that the decision would otherwise have not been made in that fashion, there is no liability. Further, now, the most you can get is attorney's fees. That is a plus.

Mr. Speaker, race norming is out. That is a plus. That is a real plus. The provisions of this bill are prospective in nature, not retroactive. That is a real plus. The consent decree problems have been resolved fairly. That is a real plus.

So on balance it is a compromise. I am happy to accept it. I would like to add some legislative history at the end of my remarks.

SECTION 1. SHORT TITLE

The legislation may be cited as the "Civil Rights Act of 1991."

SECTION 2. FINDINGS

The Congress finds that this legislation is necessary to provide additional protections and remedies against unlawful discrimination in the workplace. The Congress also finds that by placing the burden on plaintiffs to prove lack of business necessity for employment practices that have a disparate impact, rather than by placing the burden on defendants to prove the business necessity of such employment practices, the Supreme Court's decision in *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights laws.

SECTION 3. PURPOSES

The purposes of this Act are to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace, to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.* and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964, and to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

SECTION 101. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS

Under 42 U.S.C. 1981, persons of all races have the same right "to make and enforce contracts." In *Patterson* v. *McLean Credit Union*, 109 S. Ct. 2363 (1989), the Supreme Court held: "The most obvious feature of the provision is the restriction of its scope to forbidding discrimination in the 'mak[ing] and enforce[ment]' of contracts alone. Where an alleged act of discrimination does not involve the impairment of one of these specific rights, [sec.] 1981 provides no relief."

As written, therefore, section 1981 provides insufficient protection against racial discrimination in the context of contracts. In particular, it provides no relief for discrimination in the performance of contracts (as contrasted with the making and enforcement of contracts). Section 1981, as amended by this Act, will provide a remedy for individuals who are subjected to discriminatory performance of their employment contracts (through racial harassment, for example) or are dismissed or denied promotions because of race. In addition, the discriminatory infringement of contractual rights that do not involve employment will be made actionable under section 1981. This will, for example, create a remedy for a black child who is admitted to a private school as required pursuant to section 1981, but it then subjected to discriminatory treatment in the performance of the contract once he or she is attending the school.

In addition to overruling the *Patterson* decision, this section of the Act codifies the holding of *Runyon* v. *McCrary*, 427 U.S. 160 (1976), under which section 1981 prohibits private, as well as governmental, discrimination.

SECTION 102. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

Section 102 makes available compensatory and punitive damages in cases involving intentional discrimination brought under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. It sets an important precedent in tort reform by setting caps on those damages, including pecuniary losses that have not yet occurred as of the time the charge is filed, as well as all emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, whenever they occur. Punitive damages are also capped, and are to be awarded only in extraordinarily agregious cases. The damages contemplated in this section are to be available in cases challenging unlawful affirmative action plans, quotas, and other preferences.

SECTION 103. ATTORNEY'S FEES

Section 103 amends 42 U.S.C. 1988 to authorize the award of attorney fees to prevailing parties in cases brought under the new statute (created by Section 102) authorizing damages awards.

SECTION 104. DEFINITIONS

Section 104 adds definitions to those already in Title VII.

SECTION 105. BURDEN OF PROOF IN DISPARATE IMPACT CASES

In *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), the Supreme Court ruled that Title VII of the Civil Rights Acts of 1964 prohibits hiring and promotion practices that unintentionally but disproportionately exclude persons of a particular race, color, religion, sex, or national origin unless these practices are justified by "business necessity." Law suits challenging such practices are called "disparate impact" cases, in contrast to "disparate treatment" cases brought to challenge intentional discrimination.

In a series of cases decided in subsequent years, the Supreme Court refined and clarified the doctrine of disparate impact. In 1988, the Court greatly expanded the scope of the doctrine's coverage by applying it to subjective hiring and promotion practices (the Court had previously applied it only in cases involving objective criteria such as diploma requirements and height-and-weight requirements). Justice O'Connor took this occasion to explain with great care both the reasons for the expansion and the need to be clear about the evidentiary standards that would operate to prevent the expansion of disparate impact doctrine from leading the quotas. In the course of her discussion, she pointed out:

"(T)he inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. . . . (E)xtending disparate impact analysis to subjective employment practices has the potential to create a Hobson's choice for employers and thus to lead in practice to perverse results. If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met." *Watson* v. *Fort Worth Bank & Trust Co.*, 108 S. Ct. 2777, 2787–2788 (1988) (plurality opinion).

The following year, in *Wards Cove Packing Co.* v. *Atonio*, 109 S. Ct. 2115, 2126 (1989), the Court considered whether the plaintiff or the defendant had the burden of proof on the issue of business necessity. This question had not been unambiguously resolved by the Supreme Court. The courts of appeals were divided on the issue. Compare, e.g., *Burwell* v. *Eastern Air Lines*, 633 F. 2d 361, 369–372 (4th Cir.) (en banc), cert. denied, 450 U.S. 965 (1980), with *Coker* v. *Boeing Co.*, 662 F. 2d 975, 991 (3d Cir. 1981) (en banc). Resolving an ambiguity in the prior law, the Court placed the burden on the plaintiff. See also *Board of Trustees* v. *Sweeney*, 439 U.S. 24 (1978) (per curiam) (resolving similar ambiguity in disparate treatment cases by placing the burden of proof on plaintiffs).

Under this Act, a complaining party makes out a prima facie case of disparate impact when he or she identifies a particular selection practice and demonstrates that the practice has caused a disparate impact on the basis of race, color, religion, sex, or national origin. The burden of proof then shifts to the respondent to demonstrate that the practice is justified by business necessity. It is then open to the complaining party to rebut that defense by demonstrating the availability of an alternative selection practice, comparable to cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and that the respondent refuses to adopt such alternative.

The burden-of-proof issue that *Wards Cove* resolved in favor of defendants is resolved by this Act in favor of plaintiffs. *Wards Cove* is thereby overruled. As the narrow title of the Section and its plain language show, however, on all other issues this Act leaves existing law undisturbed.

The requirement of particularity

The bill leaves unchanged the longstanding requirement that a plaintiff identify the particular practice which he or she is challenging in a disparate impact case.

The history of prior legislation introduced on this subject accords with this interpretation. This important issue, often referred to as the "cumulation" issue, has also been referred to be a number of other names: "group of practices"; "multiple practices"; "particularity"; "aggregation"; and "causation."

Both S. 2104 and H.R. 4000 (from the 101st Congress), the original bills addressing this issue, would have permitted a plaintiff to sue simply by demonstrating that "a group of employment practices [defined in both bills as "a combination of employment practices that produce one or more employment decisions"] results in disparate impact." For good measure, these bills also specified that "if a complaining party demonstrates that a group of employment practices results in disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact."

This language was modified in several subsequent versions to attempt to address the

objection that it would permit suit on simple proof that an employer's bottom line numbers were wrong, and hence lead employers concerned about litigation to engage in quota hiring. In all subsequent versions that passed, however, three central features were retained.

First, all the bills that passed specifically allowed plaintiffs to bring disparate impact suits in some circumstances without isolating a simple employment practice that led to the disparate impact. See H.R. 4000, as passed by less than two-thirds of the House of Representatives in 1990, which permitted suit under some circumstances on the basis of a "group of practices"; S. 2014 as vetoed by President Bush in 1990 (same); H.R. 1 as passed by less than two-thirds of the House of Representatives (same).

Second, all these bills contained a provision generally requiring the plaintiff to identify which specific practices or practices resulted in the disparate impact, but with a gigantic exception relieving the plaintiff of that obligation if he or she could not meet it, after diligent effort, from records or other information of the respondent reasonably available through discovery or otherwise. See H.R. 4000, as passed by less than two-thirds of the House of Representatives in 1990 ("(i) except as provided in clause (iii), if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; . . . (iii) if the court finds that the complaining party can identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact—(I) the complaining party shall be required to demonstrate which specific practice or practices contributed to the disparate impact; and (II) the respondent shall be required to demonstrate business necessity only as to the specific practice or practices demonstrated by the complaining party to have contributed to the disparate impact;"); S. 2104 as vetoed by President Bush in 1990 ("(i) except as provided in clause (iii), if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; . . . (iii) the complaining party shall be required to demonstrate which specific practice or practices are responsible for the disparate impact in all cases unless the court finds after discovery (I) that the respondent has destroyed, concealed or refused to produce existing records that are necessary to make this showing, or (II) that the respondent failed to keep such records; and except where the court makes such a finding, the respondent shall be required to demonstrate business necessity only as to those specific practices demonstrated by the complaining party to have been responsible in whole or in significant part for the disparate impact;") H.R. 1 as passed by less than two-thirds of the House of Representatives ("(B) If a complaining party demonstrates that a disparate impact results from a group of employment practices, such party shall be required after discovery to demonstrate which specific practice of practices within the group results in disparate impact unless the court finds that the complaining party after diligent effort cannot identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact.").

Finally, all of these bills used some word other than "cause" in describing the relationship between the challenged practice(s) and the disparate impact. See H.R. 4000 as passed by less than two-thirds of the House of Representatives in 1990 (a complaining party may prevail by "demonstrat[ing] that a group of employment practices *results in* a disparate impact" although if he or she "can identify, from records or information reasonably available (through discovery or otherwise) which specific practice of practices *contributed* to the disparate impact" he or she must do so); S. 2104 as vetoed by President Bush in 1990 (a complaining party may prevail by "demonstrat[ing] that a group of employment practices *results in* a disparate impact", except that the complaining party "shall be required to demonstrate which specific practice or practices *are responsible* for the disparate impact" unless he or she cannot do so from the respondent's records); H.R. 1 as passed by less than two-thirds of the House in 1991 (same as H.R. 4000).

The Attorney General memorandum that accompanied President Bush's veto message of S. 2104 in 1990 specifically referenced these three features of the bill as the first argument in explaining why it had to be vetoed because it would lead to quotas. Nevertheless, the House of Representatives retained all three features in this year's H.R. 1, which contributed to continued stalemate as the Administration continued to threaten veto on the ground that the legislation would lead to quotas and the House was unable to muster a two-thirds majority in favor of the bill.

S. 1745 as introduced this year by Senator Danforth began to move away from this approach, although they were not addressed in a satisfactory manner in that bill. It required a complaining party to demonstrate that "a particular employment practice or particular employment practices (or decisionmaking process . . .) *cause[d]* a disparate impact." It also required a complaining party to demonstrate "that *each particular* employment practice causes, *in whole or in significant part*, the disparate impact" unless "the complaining party [could] demonstrate . . . that the elements of a respondent's decisionmaking process are not capable of separation for analysis" in which case "the decisionmaking process may be analyzed as one employment practice."

As finally agreed to, S. 1745 retains none of the three problematic features. It *always* requires the complaining party to demonstrate "that the respondent use *a particular* employment practice that *causes* disparate impact." Language permitting challenge to multiple practices, or to a practice that only causes "a significant part" of the disparate impact has been eliminated. Likewise, there is no language exonerating the complaining party of the obligation to demonstrate that a particular employment practice caused the disparity if he or she cannot do so from records or other information reasonably available from the respondent.

This codification of the *Wards Cove* "particularity" requirement is consistent with every Supreme Court decision on disparate impact. In *no* Supreme Court disparate impact case has a plaintiff ever been permitted to go forward without identifying a particular practice that caused a disparate impact. *All* the Supreme Court cases focused on the impact of particular hiring practices, and plaintiffs have always targeted these specific practices. *See* Griggs v. Duke Power Co., 401 U.S. 424 (1971) (high school diploma and written test); Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975) (employment tests and seniority systems); Dothard v. Rawlinson, 433 U.S. 321 (1977) (height and weight requirements); New York City Transit Authority v. Beazer, 440 U.S. 568 (1979) (exclusion of methadone users); Connecticut v. Teal, 457 U.S. 440 (1982) (scored written test); Watson v. Fort Worth Bank & Trust Co., 108 S. Ct. 2777 (1988) (subjective supervisory judgments).

Justice O'Connor's plurality opinion in the Watson case, for example, is a full and accurate restatement of the law regarding particularity. Justice O'Connor stated (108 S. Ct. at 2788):

"The plaintiff must begin by identifying the specific employment practice that is challenged. Although this has been relatively easy to do in challenges to standardized tests, it may sometimes be more difficult when subjective selection criteria are at issue. Especially in cases where an employer combines subjective criteria with the use of more rigid standardized rules or tests, the plaintiff is in our view responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities."

Justice O'Connor then went on to explain that "[o]nce the employment practice at issue has been identified, causation must be proved; that is, the plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group." *Id.* at 2788–89.

Significantly, Justice Blackmun, who was joined by Justice Brennan and Marshall in a concurring opinion in Watson, did not dissent from Justice O'Connor's formulation of the particularity requirement. Although Justice O'Connor's opinion on the particularity issue was quite detailed and explicit, Justice Blackmun's opinion hardly addressed that issue at all. He merely noted in a footnote at the end of his opinion (108 S. Ct. at 2797, n. 10) that "the requirement that a plaintiff in a disparate-impact case specify the employment practice responsible for the statistical disparty" cannot "be turned around to shield from liability an employer whose selection process is so poorly defined that no specific criterion can be identified with any certainty, let alone be connected to the disparate effect." Thus, Justices Blackmun, Brennan and Marshall expressly recognized "the requirement that a plaintiff in a disparate-impact case specify the employment practice responsible for the statistical disparity." These Justices would only have dispensed with that requirement if the employer's selection process was "so poorly defined" that identification of a specific selection criterion with any certainty was impossible.

The particularity requirement is only fair. For a plaintiff to be allowed simply to point to a racial imbalance, and then require the employer to justify every element of his selection practice, would be grossly unfair, and would turn Title VII into a powerful engine for racial quotas.[1]

That particularity requirement is not unduly burdensome. Where a decisionmaking

[1] It should also be noted that in 1982 the Supreme Court held in *Connecticut* v. *Teal* that an employer cannot justify a particular practice that has a disparate impact simply by pointing to a racially balanced bottom line. So it would make no sense at all if a plaintiff could point to a racially unbalanced bottom line without identifying a particular practice.

process includes particular, functionally-integrated elements which are components of the same test, those elements may be analyzed as one employment practice. For instance, a 100-question intelligence test may be challenged and defended as a whole; it is not necessary for the plaintiff to show which particular questions have a disparate impact. This is the principle for which the *Dothard* case is cited in the agreed-upon legislative history. There, the combination of height and weight was used as a single test to measure strength.

Finally, the phrase "not capable of separation for analysis" means precisely that. It does not apply when the process of separation is merely difficult or may entail some expense—for example, where a multiple regression analysis might be necessary in order to separate the elements. It also does not apply in situations where records were not kept or have been destroyed. In such circumstances, the elements obviously are separable.

Senator Kennedy's *post hoc* suggestion at p. 15,233 of volume 137 of the October 25, 1991 daily edition of the Congressional Record that situations of this type are meant to be covered by this language is accordingly inconsistent with the language he purports to be construing. The example offered by Senator Kennedy also clearly is not included in the "exclusive legislative history" on the *Wards Cove* issues first incorporated into an interpretive memorandum agreed to that day by Senators Danforth, Kennedy and Dole before Senator Kennedy made his floor speech, and now made the exclusive legislative history by statutory provision. See sec. 105(b) of this bill. Rather, Senator Kennedy's suggestion on this point should be understood as a single Senator's attempt, through a strained reading of different statutory language, to persuade the courts to reinsert a provision included in earlier versions of this legislation (to wit, H.R. 4000 as passed by the House with less than a two-thirds vote; S. 2104 was vetoed by President Bush; and H.R. 1 as passed by the House with less than a two-thirds vote), but eliminated from this version as not susceptible of inclusion in legislation acceptable either to the President or to two-thirds of both Houses of Congress.

In sum, the particularity provision of the compromise bill does exactly what the President has insisted all along that it do. It leaves the *Wards Cove* case law (which is the same as *Griggs* and all other Supreme Court cases) in place, and requires that plaintiffs identify the particular practice they are challenging.

The defendant's evidentiary standard: Job relatedness and business necessity

The bill embodies longstanding concepts of job-relatedness and business necessity and rejects proposed innovations. In short, it represents an affirmation of existing law, including *Wards Cove*.

For almost two years and through numerous legislative attempts and proposals, Congress sought to define business necessity; this bill rejects and displaces the following legislative proposals:

S. 2104 as introduced (Kennedy)

"(o) The term 'required by business necessity' means essential to effective job performance." Rejected.

S. 2104 as passed by the Senate on 7/18/90

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promoting, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S. Ct. 2115 (1989))." Rejected.

House Amendment to S. 2104 (passed by House 8/3/90)

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

Conference Report on S. 2104 (vetoed by the President)

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection such as tests, recruitment, evaluations, or requirements of education, experience, knowledge, skill, ability or physical characteristics, or practices primarily related to a measure of job performance, the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of other employment decisions, not involving employment selection practices as covered by subparagraph (A) (such as, but not limited to, a plant closing or bankruptcy), or that involve rules relating to methadone, alcohol or tobacco use, the practice or group of practices must bear a significant relationship to a manifest business objective of the employer.

"(2) In deciding whether the standards described in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The court may receive such evidence as statistical reports, validation studies, expert testimony, performance evaluations, written records or notes related to the practice or decision, testimony of individuals with knowledge of the practice or decision involved, other evidence relevant to the employment decision, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) this subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co.* v. *Atonio* (109 S.Ct. 2115 (1989))." Rejected.

H.R. 1 as introduced (Brooks)

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

H.R. 1 as amended and passed by the House (Brooks-Fish)

"(o)(1) The term 'required by business necessity' means the practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance.

"(2) Paragraph (1) is meant to codify the meaning of, and the type and sufficiency of evidence required to prove, 'business necessity' as used in *Griggs* v. *Duke Power Co.*, (401 U.S. 424 (1971)), and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (490 U.S. 642 (1989))."

"(p) The term 'requirements for effective job performance' may include, in addition to effective performance of the actual work activities, factors which bear on such performance, such as attendance, punctuality, and not engaging in misconduct or insubordination." Rejected.

S. 1208 (Danforth)

"(o) The term 'required by business necessity' means—

"(1) in the case of employment practices involving selection, that the practices or group of practices bears a manifest relationship to requirements for effective job performance; and

"(2) in the case of other employment decisions not involving employment selection practices as described in paragraph (1), the practice or group of practices bears a manifest relationship to a legitimate business objective of the employer.

"(p) The term 'requirements for effective job performance' includes—

"(1) the ability to perform competently the actual work activities lawfully required by the employer for an employment position; and

"(2) any other lawful requirement that is important to the performance of the job, including factors such as punctuality, attendance, a willingness to avoid engaging in misconduct or insubordination, not having a work history demonstrating unreasonable job turnover, and not engaging in conduct or activity that improperly interferes with the performance of work by others." Rejected.

S. 1408 (Danforth)

"(n) The term 'required by business necessity' means—

"(1) in the case of employment practices that are used as job qualifications or used to measure the ability to perform the job, the challenged practice must bear a manifest relationship to the employment in question.

"(2) in the case of employment practices not described in (1) above, the challenged practice must bear a manifest relationship to a legitimate business objective of the employer.

"(o) The term 'employment in question' means—

"(1) the performance of actual work activities required by the employer for a job or class of jobs; or

"(2) any requirement related to behavior that is important to the job, but may not comprise actual work activities." Rejected.

S. 1745 as introduced (Danforth)

"(n) The term 'the employment in question' means—

"(1) the performance of actual work activities required by the employer for a job or class of jobs; or

"(2) any behavior that is important to the job, but may not comprise actual work activities.

"(o) The term 'required by business necessity' means—

"(1) in the case of employment practices that are used as qualification standards, employment tests, or other selection criteria, the challenged practice must bear a manifest relationship to the employment in question; and

"(2) in the case of employment practices not described in paragraph (1), the challenged practice must bear a manifest relationship to a legitimate business objective of the employer." Rejected.

All of these prior versions were rejected.

In the place of these definitions of business necessity, the compromise bill says that the challenged practice must be *"job-related for the position in question and consistent with business necessity."* Since neither term is defined in the bill, the "Purposes" section is controlling.

In its original "Purposes" clause, S. 1745 said in pertinent part that the "purposes of this Act are * * * to overrule the proof burdens and meaning of business necessity in *Wards Cove Packing Co.* v. *Atonio* and to codify the proof burdens and the meaning of business necessity used in *Griggs* v. *Duke Power Co.* * * *." By contrast, the compromise bill's "Purposes" clause says that "[t]he purposes of this Act are— * * * to codify the concepts of 'business necessity' and 'job-related' enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*." Thus, the bill is no longer designed to overrule the meaning of business necessity in *Wards Cove.* (Attorney General Thornburgh's October 22, 1990 Memorandum to the President had objected, at 5–6, to a provision of S. 1204 that would have overruled Wards Cove's "treatment of business necessity as a defense.") Instead, the bill seeks to codify the meaning of "business necessity" in *Griggs* and other pre-*Wards Cove* cases—a meaning which is fully consistent with the use of the concept in *Wards Cove.*

The relevant Supreme Court decisional law which is to be codified can be summarized as follows. *Griggs* said: ". . . any given requirement must have a manifest relationship to the employment in question." 401 U.S. at 432. There is no two-tier definition, no subdefinition of the term "employment in question." The Court also said in *Griggs:* "Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins." *Id.* at 436.

As explained in the Attorney General's letter of June 21, 1991 to Senator Danforth, and again in the Attorney General's October 22, 1990 Memorandum to the President, this is the consistent standard applied by the Supreme Court. As the Attorney general stated to Senator Danforth, "an unbroken line of Supreme Court cases confirms" that the operative standard was "'manifest relationship to the employment in question.'" The Court has used this phrase in *Albemarle Paper Co. v. Moody,* 422 U.S. at 425 (1975); *Dothard v. Rawlinson,* 433 U.S. at 329 (1977); New York Transit Authority v. Beazer, 440 U.S. at 587 n.31 (1979); *Connecticut v. Teal,* 457 U.S. at 446 (1982) (a Justice Brennan opinion); and *Watson v. Ft. Worth Bank and Trust,* 108 S.Ct. at 1790 (O'Connor plurality opinion for four Justices). Even Justice Stevens' dissent in *Wards Cove,* joined by Justices Brennan, Marshall, and Blackmun, cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. at 2129, 2130 n.14.

Particularly significant among prior cases is the Supreme Court's 1979 decision in *New York City Transit Authority v. Beazer* 440 U.S. 568 (1979). This decision was well known to all sides in the negotiations and debates over the present bill. The *Beazer* case involved a challenge to the New York Transit Authority's blanket no-drug rule, as it applied to methadone users seeking non-safety sensitive jobs. A lower court had found a Title VII disparate impact violation. The Supreme Court, however, reversed: "At best, the [plaintiffs'] statistical showing is weak; even if it is capable of establishing a prima facie case of discrimination, it is assuredly rebutted by [the employer's] demonstration that its narcotics rule (and the rule's application to methadone users) is 'job related . . . .'" The Court noted that the parties agreed

"* * * that [the employer's] legitimate employment goals of safety and efficiency require the exclusion of all users of illegal narcotics . . . . Finally, the District court noted that those goals are significantly served by—even if they do not require—[the employer's] rule as it applies to all methadone users, including those who are seeking employment in on-safety-sensitive positions. The record thus demonstrates that [the employer's] rule bears a 'manifest relationship to the employment in question.' "*Grigg v. Duke Power Co.*, 401 U.S. 424, 432. *id.* at 587, n. 31.

The Supreme Court's formulation in *Ward Cove* of the appropriate evidentiary standard defendants must meet is not only based upon that in *Beazer,* but is nearly identical with it. By removing the language in the purposes clause stating the bill overruled *Ward Cove* with respect "to the meaning of business necessity," by substituting the language in the compromise purposes section referring to Supreme Court decisions prior to *Ward Cove,* and by removing the definitions of business necessity or job-related and any definition of "employment in question," the present bill has codified the "business necessity" test employed in *Beazer* and reiterated in *Ward Cove.*

The language in the bill is thus plainly not intended to make that test more onerous for employers to satisfy than it had been under current law.

Furthermore, "job related for the position in question" is to be read broadly, to include any legitimate business purpose, even those that may not be strictly required for the actual day-to-day activities of an entry level job. Rather, this is a flexible concept that encompasses more than actual performance of actual work activities or behavior important to the job. See *Washington* v. *Davis,* 426 U.S. 229, 249–251 (1976). Thus, those purposes may include requirements for promotability to other jobs. There has never been any suggestion in the language or holdings of pre-Wards Cove cases that such purposes are not legitimately considered. Even Justice Stevens' *dissent* in Wards Cove stated the definition of business necessity quite broadly—it is required only that the challenged practice "serves a valid business purpose." 490 U.S. at 665.

Alternative practices with less adverse effect

The bill provides that a complaining party may establish that an employment practice has an unlawful disparate impact if he demonstrates the existence of an "alternative employment practice and the respondent refuses to adopt such alternative employment practice," where that demonstration is "in accordance with the law as it existed on June 4, 1989," i.e., the day before *Ward Cove* was decided.

The standards outlined in *Albemarle Paper Co.*, and *Watson* should apply.

The Supreme Court indicated in *Albemarle* that plaintiffs can prevail if they "persuade the factfinder that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate [hiring] interest[s]; by so demonstrating, [plaintiffs] would prove the defendants were using their tests merely as a 'pretext' for discrimination." Any alternative practices which plaintiffs propose must be equally effective in achieving the employer's legitimate business goals. As was pointed out in *Watson:* "Factors such as the cost or other burdens of proposed alternative selection devices are relevant in determining whether they would be equally as effective as the challenged practice in serving the employer's legitimate goals." 108 S. Ct., at 2790. In making these judgments, the judiciary should bear carefully in mind the fact that "[c]ourts are generally less competent than employers to restructure business practices, and unless mandated to do so by Congress they should not attempt it." *Furnco Construction Corp.* v. *Waters,* 438 U.S. 567, 578 (1978).

Therefore, unless the proposed practice is comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, the plaintiff should not prevail.

SECTION 106. DISCRIMINATORY USE OF TEST SCORES

Section 106 means exactly what it says: race-norming or any other discriminatory adjustment of scores or cutoff points of any employment related test is illegal. This means, for instance, that discriminatory use of the Generalized Aptitude Test Battery (GATB) by the Department of Labor's and state employment agencies' is illegal. It also means that race-norming may not be ordered by a court as part of the remedy in *any* case, nor may it be approved by a court as a part of a consent decree, when done because of the disparate impact of those test scores. See *Bridgeport Guardians, Inc.* v. *City of Bridgeport*, 933 F.2d 1140 (2d Cir. 1991).

It is important to note, too, that this section should in no way be interpreted to discourage employers from using tests. Frequently tests are good predictors and helpful tools for employers to use. Indeed, Title VII contains a provision specifically designed to protect the use of tests. See 42 U.S.C. 2000e–2(h). Rather, the section intends only to ban the discriminatory adjustment of test scores or cutoffs.

SECTION 107. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

Section 107 of the bill addresses the holding in *Price Waterhouse* v. *Hopkins*, 109 S. Ct. 1775 (1989), in which the Court ruled in favor of a woman who alleged that she had been denied partnership by her accounting firm on account of her sex. The Court there faced a case in which the plaintiff alleged that her gender had supplied part of the motivation for her rejection for partnership. The Court held that once she had established by direct evidence that sex played a substantial part in the decision, the employer could still defeat liability by showing that it would have reached the same decision had sex not been considered.

Section 107 allows the employer to be held liable if discrimination was a motivating factor in causing the harm suffered by the complainant. Thus, such discrimination need not have been the sole cause of the final decision.

The provision also makes clear that if an employer establishes that it would have taken the same employment action absent consideration of race, sex, color, religion, or national origin, the complainant is not entitled to reinstatement, backpay, or damages.

It should also be stressed that this provision is equally applicable to cases involving challenges to unlawful affirmative action plans, quotas, and other preferences.

SECTION 108. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT DECREE JUDGMENTS OR ORDERS.

In *Hansberry* v. *Lee*, 311 U.S. 32, 40–41 (1940) (citations omitted), the Supreme Court held:

"It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statutes of the United States . . . prescribe, . . . and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require."

In *Hansberry*, Carl Hansberry and his family, who were black, were seeking to challenge a racial covenant prohibiting the sale of land to blacks. One of the owners who wanted the covenant enforced argued that the Hansberrys could not litigate the validity of the covenant because that question had previously been adjudicated, and the covenant sustained, in an earlier lawsuit, although the Hansberrys were not parties in that lawsuit. The Illinois court had ruled that the Hansberrys' challenge was barred, but the Supreme Court found that this ruling violated due process and allowed the challenge.

In *Martin* v. *Wilks*, 109 S. Ct. 2180 (1989), the Court confronted a similar argument. That case involved a claim by Robert Wilkes and other white fire fighters that the City of Birmingham had discriminated against them by refusing to promote them because of their race. The City argued that their challenge was barred because the City's promotion process had been sanctioned in a consent decree entered in an earlier case between the City and a class of black plaintiffs, of which Wilks and the white fire fighters were aware, but in which they were not parties. The Court rejected this argument. Instead, it concluded that the Federal Rules of Civil Procedure required that persons seeking to bind outside to the results of litigation have a duty to join them as parties, see Fed. R. Civ. P. 19, unless the court certified a class of defendants adequately represented by a named defendant, see Fed. R. Civ. P. 23. The Court specifically rejected the defendants' argument that a different rule should obtain in civil rights litigation.

Under specified conditions, Section 108 of the bill would preclude certain challenges to employment practices specifically required by court orders or judgments entered in Title VII cases. This Section would bar such challenges by any person who was an employee, former employee, or applicant for employment during the notice period and who, prior to the entry of the judgment or order, received notice of the judgment in sufficient detail to apprise that person that the judgment or order would likely affect that person's interests and legal rights; of the relief in the proposed judgment; that a reasonable opportunity was available to that person to challenge the judgment or order by from challenging the proposed judgment after that date. The intent of this section is to protect valid decrees from subsequent attack by individuals who were fully apprised of their interest in litigation and given an opportunity to participate, but who declined that opportunity.

In particular, the phrase "actual notice . . . appris[ing] such person that such judgment or order might adversely affect the interests and legal rights of such person," means of course that the notice itself must make clear that potential adverse effect. And this, in turn, means also that the discriminatory practice at issue must be clearly a part of the judgment or order. Otherwise, it cannot credibly be asserted that the potential plaintiff was given adequate notice. Thus, where it is only by later judicial gloss or by the earlier parties' implementation of the judgment or order that the allegedly discriminatory practice becomes clear, Section 11 would not bar a subsequent challenge. Moreover, the adverse effect on the person barred must be a likely or probable one, not a mere possibility. Otherwise, people would be encouraged to rush into court to defend against any remote risk to their rights, thus unnecessarily complicating litigation. Finally, the notice must include notice of the fact that the person must assert his or her rights or lose them. Otherwise, it will be insufficient to apprise the individual "that such judgment or order might adversely affect" his or her interests.

"Adequate representation" requires that the person enjoy a privity of interest with the later party. This is because in Section 11 both "(n)(1)(B)(i)" and "(n)(1)(B)(ii)" must be instrued with "(n)(2)(D)" so that people's due process rights are not jeopardized. And the Supreme Court has stated clearly: "It is a violation of due process for a judgment to be binding on a litigant who was not a party for a privy and therefore never had an opportunity to be heard." *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 327, n.7 (1979).

SECTION 109. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT

Section 109 extends the protections of Title VII and the ADA extraterritorially. It adopts the same language as the ADEA to achieve this end.

In addition, the section makes clear that employers are not required to take actions otherwise prohibited by law in a foreign place of business.

SECTION 111. EDUCATION AND OUTREACH

Section 111 provides for certain educational and outreach activities by the EEOC. These activities are to be carried out in a completely nonpreferential manner.

SECTION 112. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Section 112 overrules the holding in *Lorance* v. *AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989), in which female employees challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority system with the intention of altering their contractual rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for plaintiffs to file their complaint began to run when the employer adopted the allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which plaintiffs suffered the diminution in employment status about which they complained.

The rule adopted by the Court is contrary to the position that had been taken by the Department of Justice and the EEOC. It shields existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. At that time, the controversy between an employer and an employee can be focused more sharply.

In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary, as well as unfocused, litigation.

Employees will be forced either to challenge the system before they have suffered harm or to remain forever silent. Given such a choice, employees who are unlikely ever to suffer harm from the seniority system may nonetheless feel that they must file a charge as a precautionary measure—an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to.

Finally, the *Lorance* rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only within 180 (or 300) days after becoming subject to a seniority system would be unfair to both employers and employees. The rule fails to protect seniority systems from delayed challenge, since so long as employees are being hired someone will be able to sue. And, while this rule would give every employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the challenge was sufficiently focused and before it was clear that a challenge was necessary Finally, most employees would be reluctant to begin their jobs by suing their employers.

Section 112 is not intended to disturb the settled law that disparate impact challenges may not be brought against seniority systems. See *TWA* v. *Hardison*, 432 U.S. 63, 82 (1977); *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 65, 69 (1982; *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 (1982).

SECTION 113. AUTHORIZING AWARD OF EXPERT FEES

Section 113 authorizes the recovery of a reasonable expert witness fee by prevailing parties. See *West Virginia University Hospitals, Inc.* v. *Casey*, No. 89-994 (U.S. Sup. Ct. Mar. 19, 1991); cf. *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.* 482 U.S. 437 (1987). The provision is intended to allow recovery for work done in preparation of trial as well as after trial has begun.

In exercising its discretion, the court should ensure that fees are kept within reasonable bounds. Fees should never exceed the amount actually paid to the expert, or the going rate for such work, whichever is lower.

SECTION 114. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

Section 114 extends the period for filing a complaint against the Federal government pursuant to Title VII from 30 days to 90 days. It also authorizes the payment of interest to compensate for delay in the payment of a judgment according to the same rules that govern such payments in actions against private parties.

SECTION 115. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

This section generally conforms procedures for filing charges under the ADEA with those used for other portions of Title VII. In particular, it provides that the EEOC shall notify individuals who have filed charges of the dismissal or completion of the Commission's proceedings with respect to those charges, and allows those individuals to file suit from 60 days after filing the charge until the expiration of 90 days after completion of those proceedings. This avoids the problems created by current law, which imposes a statute of limitations on the filing of suit regardless of whether the EEOC has completed its action on an individual's charge.

SECTION 119. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED

Section 116 specifies that nothing in the amendments made by this Act shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law. Thus, this legislation makes no change in this area to Title VII of the Civil Rights Act of 1964, which states:

"It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

"(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

42 U.S.C. 2000e-2(a)

This legislation does not purport to resolve the question of the legality under Title VII of affirmative action programs that grant preferential treatment to some on the basis of race, color, religion, sex or national origin, and thus "tend to deprive" other "individual[s] of employment opportunities . . . on the basis of race, color, religion, sex or national origin". In particular, this legislation should in no way be seen as expressing approval or disapproval of *United Steelworkers* v. *Weber*, 443 U.S. 193 (1979), or *Johnson* v. *Transportation Agency*, 480 U.S. 616 (1987), or any other judicial decision affecting court-ordered remedies, affirmative action, or conciliation agreements.

SECTION 118. ALTERNATIVE MEANS OF DISPUTE RESOLUTION

This provision encourages the use of alternative means of dispute resolution, including binding arbitration, where the parties knowingly and voluntarily elect to use these methods.

In light of the litigation crisis facing this country and the increasing sophistication and reliability of alternatives to litigation, there is no reason to disfavor the use of such forums. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 111 S. Ct. 1647 (1991).

TITLE IV GENERAL PROVISIONS

SECTION 401. SEVERABILITY

Section 401 states that if a provision of this Act is found invalid, that finding will not affect the remainder of the Act.

SECTION 402. EFFECTIVE DATE

Section 402 of the Act specifies that the Act and the amendments made by the Act take effect on the date of enactment. Accordingly they will not apply to cases arising before the effective date of the Act. See *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988); *cf. Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 110 S. Ct. 1570 (1990) (declining to resolve conflict between *Georgetown University Hospital* and *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974)). Subsection (b) specifically points out that nothing in the Act will apply retroactively to the well known case involving the Wards Cove Packing Company, an Alaska company that spent 24 years defending against a disparate impact challenge.

Absolutely no inference is intended or should be drawn from the language of subsection (b) that the provisions of the Act or the amendments it makes may otherwise apply retroactively to conduct occurring before the date of enactment of this Act. Such retroactive application of the Act and its amendments is not intended; on the contrary, the intention of subsection (b) is simply to honor a commitment to eliminate every shadow of a doubt as to any possibility of retroactive application to the case involving the Wards Cove Company.

Not only would retroactive application of the Act and its amendments to conduct occurring before the date of enactment be contrary to the language of section 402, but it would be extremely unfair. For example, defendants in pending litigation should not be made subject to awards of money damages of a kind and an amount that they could not possibly have anticipated prior to the time suit was brought against them.

This interpretation of section 402 of the Act is confirmed by the Interpretive Memorandum (137 Cong. Rec. S 15472) (October 30, 1991), submitted by Senator Dole and others; the Interpretive Memorandum (137 Cong. Rec. S 15483) (October 30, 1991), submitted by Senator Danforth and others; and the Legislative History, Technical Corrections (137 Cong. Rec. S 15953) (November 5, 1991), submitted by Senator Dole. Thus, it is *not* "up to the courts to determine the extent to which the bill will apply to cases and claims that are pending on the date of enactment.", (137 Cong. Rec. S 15485) (Oct. 30, 1991), (see also, 137 Cong. Rec. S 15963-4) (November 5, 1991). The language of section 402 is designed to make certain that the courts *not* apply the provisions of the Act or its amendments to conduct occurring before the date of enactment.

Mr. WASHINGTON. Mr. Speaker, will the gentleman yield?

Mr. HYDE. I yield to my good friend from Houston.

Mr. WASHINGTON. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, would the gentleman from Illinois [Mr. HYDE] answer one question: Can the gentleman tell me how if I were a private employer I would not be better off with this bill that the President is going to sign if I hired by the numbers?

Mr. HYDE. Mr. Speaker, reclaiming my time, H.R. 1 was a quota bill because of its definition of business necessity. I do not think hiring by the numbers is a good idea, because it deprives meritorious people from work because they have the wrong color skin. I think that is wrong. I am pleased that the language of the compromise now agrees with me.

Mr. WASHINGTON. The gentleman finally learned that lesson.

Mr. HYDE. Mr. Speaker, I always learn from listening to the gentleman from Texas [Mr. WASHINGTON].

Mr. FORD of Michigan. Mr. Speaker, I yield myself 10 seconds.

Mr. Speaker, I listened carefully to the legislative history that the gentleman from Illinois [Mr. HYDE] tried to create for this bill, and, as one of the authors of the bill, I can categorically deny he was right on any one of his interpretations.

Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. SARPALIUS].

Mr. SARPALIUS. Mr. Speaker, "I have a dream." Those words were echoed just a few blocks from this Chamber by Martin Luther King. His dream of America at that time was that maybe some day in this country all people would be treated equal, regardless of the color of your skin, whether you be male or female, regardless of your religious belief or your national origin.

This bill moves us one step closer to that dream. It is amazing how this country is changed. When we first began we had slavery and women did not even have the right to vote. But we have slowly, slowly moved toward that American dream of equality and justice for all people in this country.

Mr. Speaker, it is a shame that we had a President that did not have sight of that dream. He did not see the light, but he began to feel the heat, the heat of the American people who strongly believed in that American dream.

Mr. Speaker, I strongly urge Members to vote for this proposal, and I congratulate the chairman for his work and his effort.

The SPEAKER pro tempore (Mr. MFUME). The Chair would advise Members that the gentleman from Texas [Mr. BROOKS] has 2 minutes remaining and has the right to close debate, the gentleman from Michigan [Mr. FORD] has 4½ minutes remaining, and the gentleman from Pennsylvania [Mr. GOODLING] has 2 minutes remaining.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York [Mr. FISH], the ranking minority member of the Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I thank the chairman for yielding.

Mr. Speaker, previously under a unanimous consent request the gentleman from California [Mr. EDWARDS] inserted a legislative history into this debate. I would like to associate myself with two particular elements of that legislative history. The Senate made an attempt to prevent duplicative recovery, but the result in the drafting may be interpreted to force an election of remedies which I think is severely restrictive and unnecessary, and I join the gentleman from California [Mr. EDWARDS] in his comments on that.

Also with respect to the effective date in section 402, I think that it should be made clear that the bill applies to pending cases.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Georgia [Mr. LEWIS].

Mr. LEWIS of Georgia. Mr. Speaker, I thank the gentleman for yielding time.

Mr. Speaker, I rise today to urge support for this civil rights bill. I rejoice that finally we have a bill that the President has said he will sign. Finally.

It is strange to me, that we had a civil rights bill 2 years ago, and it was blocked by the President. So now when I say "Thank you Mr. President for agreeing to the civil rights bill," I must also ask "Why did you make us wait, Mr. President?"

In 1964 we all rejoiced at the passage of the Civil Rights Act. Not because it would end all discrimination, but because it was an important beginning.

And now, this bill is yet another beginning. It is not perfect, it is not a panacea, but it is a step in the right direction—and it is an important step down a very, very long road.

Mr. Speaker, it is a major step toward ending discrimination in the workplace.

Let us move forward today. Let us say no to discrimination. Let us say yes to justice and fairness. Let us say yes to this bill.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will advise Members that all remarks should be directed to the Chair.

Mr. GOODLING. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Speaker, I rise in heartfelt opposition to this bill. I do so I believe without compromising the true civil rights of real individuals and in sincere admiration for the true heroes of the American civil rights movement.

My opposition will be misrepresented by many, and misunderstood by others, and I understand that. I also understand that this bill is a compromise. It is a compromise of the integrity of the civil rights movements in this country and of the honor of America's true civil rights leaders.

Mr. Speaker, conscience and conviction compel me to protest and to vote so against this legislation.

Mr. Speaker, the saddest thing about this bill is that it validates the most evil contentions of the rednecks and the crackers of the sixties, and for that we all bear a modicum of shame.

□ 1600

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Speaker, I rise in support of the civil rights legislation.

I rise in strong support of the bipartisan civil rights legislation we have before us today.

One of the fundamental principles underlying this Nation is that "all men are created equal." This civil rights legislation will reestablish the balance between the legitimate interests of minorities seeking equal opportunity and the interests of individual members of the majority who have not committed acts of discrimination.

This is not a perfect bill. There is a serious question of equity surrounding this legislation. It is designed to eliminate inequality in our society, yet it treats various types of discrimination differently.

In spite of these concerns, I strongly support this bill. It overturns the five key 1989 Supreme Court decisions that skewed the policy balance too heavily against the legitimate interests of those who have been denied equal employment opportunities in America. For the first time, individuals discriminated against on the basis of their sex, religion, or disability will be eligible to collect compensatory and punitive damages.

This legislation also prohibits adjusting employment test scores on the basis of race, color, sex, religion, or national origin. There is no reason to allow so-called race norming of tests scores.

Over the past quarter century, significant progress has been made on the civil rights front. The breaking down of past walls of injustice is one of this Nation's proudest accomplishments.

Mr. Speaker, the passage of this momentous legislation has already been delayed far too long. Finally, the time has arrived to end our 2-year battle to pass effective civil rights legislation. We must enact this legislation today.

Congress has a study to lead the United States toward a day when discrimination is permanently eliminated, and all Americans are treated as equals.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Utah [Mr. ORTON].

Mr. ORTON. Mr. Speaker, I rise in support of the Civil Rights legislation.

Mr. Speaker, I rise in support of S. 1745, the Civil Rights Act of 1991, and congratulate Senator DANFORTH and all other Members of the House and Senate who helped to craft this compromise. I am pleased to vote yes on this bill and look forward to its swift enactment into law.

In June, the House passed H.R. 1 the civil rights bill by an overwhelming majority. On that vote, I reluctantly opposed H.R. 1 because I believed that the legislation was fatally flawed and that we could do better. I had two major concerns with H.R. 1. First, the shift of the burden of proof in disparate impact cases alleging unintentional discrimination resulting from employment practices, and, second, the issue of damages for plaintiffs in cases where intentional discrimination is proven. This new compromise legislation resolves my major concern in cases of disparate impact. In Griggs the Supreme Court held that a business practice which results in disparate impact and is not required by business necessity is unlawful. In attempting to define "business necessity" and codify Griggs language, H.R. 1 would have created an untenable shift of the burden of proof upon an employer to prove a negative. The compromise strikes an appropriate balance in addressing the problem of identifying specific employment practices in showing a disparate impact. It requires plaintiffs to challenge a particular employment practice. It also stipulates, however, that a decisionmaking process may be analyzed as one employment practice if the complaining party demonstrates that the "elements of the [employer's] decisionmaking processes are not capable of separation for analysis." Under this test, the burden of proof rests correctly with the plaintiff to raise a prima facie case of dis-

parate impact in this manner, and when the plaintiff is able to make such a showing, the burden then shifts to the defendant to prove an affirmative defense, namely, business necessity. The employer must show that an employment practice with a disparate impact is "job related for the position in question and consistent with business necessity." Unfortunately, S. 1745 omits any specific definition of "job related" or "business necessity." In lieu of any exact definition of business necessity in this legislation, the courts interpreting this Act must be guided by the language of Griggs versus Duke Power Co. (1971). The opinion of the Supreme Court in Griggs provides sufficient guidance for the definition of business necessity and should be followed in order to give proper strength to this bill.

My second major reservation with H.R. 1 involved the issue of damages for intentional discrimination. I have serious concerns about the constitutionality—under the equal protection clause—of the provisions of this act which would place a limitation on the amount of damages available for sex discrimination while no such limitation exists on damages resulting from racial discrimination. However, if Congress in its wisdom chooses to place a cap upon damages, I believe that this flexible cap for compensatory damages is an improvement on H.R. 1. I am satisfied to leave it to the Federal courts to decide if the limitation on damages between racial and sex discrimination claims will pass a test of constitutionality.

Mr. Speaker, on the balance I believe this compromise represents a substantial improvement over the bill the House considered in June, and I am pleased to lend it my support by voting aye.

Mr. BROOKS. Mr. Speaker, I reserve the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, I rise in support of S. 1745. As a supporter of the last Congress' civil rights bill, I am very happy that a compromise has been reached in this Congress.

Every American, regardless of race, creed, or sex, should be guaranteed full civil rights. This legislation is a continuing step in making that dream a reality.

I want to commend all of the civil rights leaders, distinguished Senators, the distinguished House Members, and our President who have worked with good will to make this historical compromise possible.

Mr. GOODLING. Mr. Speaker, I reserve the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. GEREN].

Mr. GEREN of Texas. Mr. Speaker, I rise in support of the Civil Rights Act of 1991. I want to commend the gentleman from Texas [Mr. BROOKS] for his leadership and his distinguished service in bringing this to the floor.

Mr. FORD of Michigan. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, I rise in support of S. 1745, the Civil Rights Act of 1991.

Mr. FORD of Michigan. Mr. Speaker, I yield back the balance of my time.

Mr. GOODLING. Mr. Speaker, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding to me. I just want to say, in respect to those that have said we have had to wait so long because the President did not see the light, this is a radically different bill than H.R. 1. It is different in the definition of business necessity. It is different in requiring the plaintiff to identify the hiring practice that is so offensive. It is different in the treatment of mixed motive cases.

It is different in the treatment of consent decree cases, and it is different in limiting the damages that are available in jury trials.

Therefore, it is a compromise, and everybody should be complimented and not berated for agreeing to it.

Mr. BROOKS. Mr. Speaker, I yield 30 seconds to the gentleman from Texas [Mr. WASHINGTON].

Mr. WASHINGTON. Mr. Speaker, is it not true that the only difference is that the gentleman is not in a position to call it a quota bill any more?

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. WASHINGTON. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I am certainly not in a position to call it a quota bill because it is not a quota bill anymore.

Mr. WASHINGTON. Reclaiming my time, it never was a quota bill.

Mr. SERRANO. Mr. Speaker, my colleagues, this amendment is a straightforward, noncontroversial amendment which seeks to address and correct employment discrimination experienced by Hispanics and other underserved groups in the U.S. labor force.

There is undeniable evidence that Hispanics are not benefiting equitably from Federal civil rights enforcement efforts. At least four independent studies have found that, even after controlling for factors known to affect employment and educational attainment, Hispanics face serious differential treatment and continue to experience high levels of employment discrimination in the labor market.

Despite this empirical evidence of continuing pervasive employment discrimination, few Hispanics have access to the Government systems in place to remedy such discrimination. Even the Equal Employment Opportunities Commission [EEOC], the Federal agency charged with policing discrimination, has not devoted an adequate amount of resources to educate and litigate on behalf of Hispanics.

In the 1983 EEOC report, "Analysis of the EEOC Services to Hispanics in the United States," an EEOC appointed task force found that the EEOC was not providing equivalent service to all protected group members, particularly Hispanics.

In the external study of the 1983 Hispanic charge study, 120 representatives of the Hispanic community testified at six hearings that Hispanics were either unaware of the EEOC's enforcement authority or had a negative perception of the agency. The Hispanic witnesses expressed a general lack of trust for the EEOC and its service to Hispanics.

In an internal study which the EEOC conducted as part of its survey on services to the Hispanic community, the EEOC found that: They had a record of hiring very few Hispanics, particularly in policy positions; did not actively investigate Hispanic charges or litigate Hispanic claims; and had made little effort to improve its presence or reputation in the Hispanic Community.

Mr. Speaker, recent evidence indicates that little or no improvement has been me by the EEOC since the 1983 Hispanic Charge Study. The EEOC's combined annual report for fiscal years, 1986, 1987, and 1988 fail to provide any evidence of improved services to Hispanics. For example, for fiscal year 1988, of the total 368 cases reported, only 7, or 1.9 percent, were of national origin, that is of Hispanic claims.

In my opinion, Mr. Speaker, it is necessary to amend the current law and direct the EEOC to fulfill its existing statutory mandate to act on its own, to uncover and stop widespread discrimination. It is also necessary for the EEOC to allocate adequate resources to service the Hispanic community, and establish better communications between the EEOC and community-based Hispanic organizations.

My amendment would allow the commission to make grants to State or local governmental entities, or public or private nonprofit organizations, to carry out aggressive educational, informational, and outreach programs, to inform the historically underserved groups. The term underserved should include other rapidly growing minority groups and newly covered protected groups.

The program should include:

The preparation and dissemination of material in languages other than English;

The implementation of previously initiated expanded presence activities such as media campaigns, increased hiring of bilingual staff; and

The creation of demonstration grant programs for community based outreach and public information activities.

This amendment has the support/endorsement of National Council of La Raza, the NAACP, MALDEF, and the Lawyers Committee for Civil Rights Under the Law, the ACLU, PRLDEF, the National Puerto Rican Coalition, Disability Rights Education and Defense Fund, and the National Urban League.

Mr. KLECZKA. Mr. Speaker, it is disturbing that even today some citizens are disqualified for employment or promotion because of their race, religion, sex, or disability. In a democratic society such as ours, workplace discrimination simply cannot be tolerated or overlooked—especially with the growing number of women and elderly and disabled citizens, entering the work force today. Unfortunately, five recent decisions by the Supreme Court permit discriminatory workplace practices to continue unchecked. The Senate-passed civil rights bill [S. 1745], before us today, would reverse

these bad decisions and, for the first time, allow individuals to seek punitive damages under title VII of the 1964 Civil Rights Act. These much-needed reforms deserve our support.

The Senate-passed bill resembles H.R. 1, the House civil rights measure, which was approved with my support in June, by a 273 to 158 vote. Indeed, except for its handling of disparate impact cases and title VII punitive damages, S. 1745 is essentially the same as H.R. 1. I am pleased the President is willing to sign the Senate measure. A workplace civil rights bill is long overdue.

The establishment of a Glass Ceiling Commission, an important feature of H.R. 1, is included in S. 1745. The Commission would study the barriers to the advancement of women and minorities in employment, and make recommendations to eliminate them. Another feature common to both bills is the overturning of five 1989 Supreme Court decisions that made it more difficult for workers to initiate and win antidiscrimination lawsuits—Wards Cove versus Atonio, Price Waterhouse versus Hopkins, Martin versus Wilkes, Lorance versus AT&T Technologies, and Patterson versus McLean Credit Union.

However, the S. 1745 disparate impact provision, intended to restore the interpretation of business necessity used before Wards Cove, is less specific than the one in H.R. 1. Prior to Wards Cove, the 1971 Griggs versus Duke Power Co. opinion barred an employer from using job practices that disproportionately exclude qualified women and minorities. Only a practice that was significantly related to successful job performance was considered a business necessity, exempt from title VII. Wards Cove broadened this narrow exception by requiring an employer to show only that a practice served an employment goal—a vague standard that does not force an employer to prove a practice is related to the specific job in question. S. 1745 generally restores the Griggs standard that a hiring or promotion practice must be related to a particular job's requirements—but does not provide a specific definition of business necessity or job related. By contrast, H.R. 1 requires a challenged practice to bear a significant and manifest relationship to the requirements of effective job performance to qualify for the business necessity exemption. Although I prefer the House approach to resolving the problems raised by the Wards Cove decision, the Senate provision on this matter goes very far in restoring the Griggs standard, and has my support.

It is with some reluctance, however, that I support the title VII punitive damages portion of this bill. Allowing workers to seek monetary awards under title VII of the 1964 Civil Rights Act for punitive damages—as racial minorities may with section 1981 of the 1866 Civil Rights Act—makes sense. But limiting the award based on business size, as S. 1745 proposes, is unfair and counterproductive. On principle, all persons harmed by intentional discrimination in the workplace, not just racial minorities, should have access to unlimited punitive damages.

The bill does, however, for the first time guarantee that Americans facing job bias because of religious beliefs, disability, or sex may seek punitive damages. This feature of the legislation is a definite improvement over the status quo, and has my strong support. While such monetary awards are no compensation for workplace discrimination, they can help victims obtain counseling and other services to overcome the pain and suffering of intentional discrimination. Efforts in the future to uncap title VII punitive damages will have my backing.

S. 1745 ensures that five clearly debilitating Supreme Court rulings will no longer prevent workplace discrimination victims from bringing their cases to court. Just as promising, title VII of the 1964 Civil Rights Act is broadened by this bill to allow punitive damages awards, bringing this important antidiscrimination law more into line with its counterpart, section 1981 of the 1866 Civil Rights Act. Together, these reforms will bring the American workplace many steps closer to being one in which all workers are judged on their merits.

For the benefit of all Americans, I urge my colleagues to vote for passage of this bill.

Mr. RICHARDSON. Mr. Speaker, today marks the near completion of a long struggle to pass a civil rights bill. After 2 years of hard work and negotiation, today is a day of triumph for civil rights in America.

As a representative of New Mexico, with large Hispanic and native American populations, I am well aware of the repercussions of discrimination. This bill affirms the right of minorities to challenge discriminatory practices in the workplace which continues to be a primary site of confrontation. By overturning five recent Supreme Court civil rights decisions, in which the rights of employers seem to outweigh those of the victims of discrimination, this bill asserts Congress' commitment to abolishing discrimination in this country.

While data from the 1990 census reveals tremendous demographic shifts, we are reminded to be ever vigilant to the needs of our country's increasingly minority population. Indeed, the United States is like no other country in the world. With such a variety of ethnicities, it is not surprising that race continues to be one of the most volatile issues in our country. Recent violent conflicts between different minorities here in Washington and in other areas of the country highlight the frustration resulting from discrimination in employment, housing, and social services, as well as the potential for resentment and hostility between racial and ethnic groups. Although this country has made tremendous headway in the area of civil rights, much work remains. I firmly believe that Congress must expand protection for minorities and women in this country.

While the civil rights bill is a victory in some senses, this legislation does have shortcomings. I refer specifically to the caps on damages for sex based discrimination suits. I find it ironic that a civil rights bill itself contains discrimination toward a particular group, in this case, women. Although this compromise retains this glaring inequity, I am hopeful that the caps on damages will be eliminated in the upcoming year.

Overall, I believe that this civil rights bill, which asserts the rights of victims of discrimination, while reflecting a sensitivity to the rights of employers, leads our country in a positive direction in the area of civil rights. I am proud to lend my support to this important legislation and I urge my colleagues to do the same.

Mr. PACKARD. Mr. Speaker, I rise in support of the civil rights bill. However, I announce my support with reluctance. I do so because I believe that while this bill has many important and comprehensive provisions, once again, it is demonstrative of congressional willingness to exempt itself from the laws it makes for the Nation.

Today I joined my colleague from California, BILL DANNEMEYER, in sponsoring legislation which would remove the exemptions from any law Congress has passed and exempted itself. If this is truly Government of the people by the people, it is only logical that certain people are not exempt from this Nation's laws. Congress simply should not exempt itself from the laws we impose on our constituency.

This Nation is made up of individuals, with diverse backgrounds, religions, and beliefs. It is precisely this rich diversity among individuals that makes us great. Yet despite all of our differences, we are all equal under the law. Justice, in this country, is blind to the idiosyncracies of birth, race, and gender. Every individual in this country is subject to and protected by our laws.

However, it appears the Congress is an exception. Equal justice before the law is a guiding principle of this Nation; one that has separated us from all of the other countries on this Earth; one that has made us great. And this institution—which is composed of women and men elected to do the will of the people—is placing itself above the law. By exempting itself from the provisions of this civil rights legislation, Congress mocks the very principles upon which this country was built.

Mr. Speaker, I again respectfully state my support for this legislation. It sends a signal of reaffirmation to the American people: This is the home of the free and the Brave, where an individual is free to accomplish, even surpass, his or her expectations and goals regardless of gender, skin color, or social status. However, when Congress exempts itself from the laws it makes for others it sends another signal—one that this institution is utterly unaccountable, hypocritical, and not of the people.

Mr. GRADISON. Mr. Speaker, in 1989, the Supreme Court of the United States issued decisions in five cases that all hinged on interpretations of title VII and section 1981 of the Federal Code. These decisions were all controversial because they upset the consensus on civil rights that had existed since 1964 with the passage of the landmark Civil Rights Act of that year.

For the last 2 years, Congress has struggled to restore prior law and clarify congressional intent to ensure the civil rights protection for all Americans. The debate has been acrimonious and divisive. I have opposed previous legislation because, in my judgment, the legislation did much more than merely restore prior law. I was concerned principally that previous proposals indirectly encouraged the use of quotas in employment.

On October 24, a long-awaited and much hoped for compromise was reached on this legislation. Like all good compromises, it allows both sides to claim victory. The important point here is that the legislation resolves my concerns about the quota problem and re-

stores proper law. Like a majority of my colleagues, I am pleased that we are finally above to resolve this issue in such a manner that it protects everyone's civil rights. S. 1745 is a bill that I can support and I regret that I am unable to be in the Chamber this afternoon to cast my vote in favor of S. 1745.

Ms. MOLINARI. Mr. Speaker, after 2 years of divisiveness, Congress and the administration have finally agreed to a bill that can be enacted into law.

I strongly support equal opportunity, regardless of race, ethnic background, or gender. Discrimination, intentional or unintentional, is flatly wrong and should never be tolerated. While I did not support H.R. 1, I firmly believe that this bill before us today has mitigated some of the concerns I had with the original bill.

I am extremely pleased that this compromise includes language stating that a plaintiff must identify a specific practice yielding discrimination in hiring rather than just the existence of a statistical imbalance. I still believe that this bill will create unnecessary lawsuits, and will put small business in tenuous hiring positions. My fear is this may keep small businesses small, and discourage growth. For these reasons I will be following this legislation when it is law, closely.

However, I also realize that there comes a point where the strides gained for small business are overwhelmed by a society that is perceived to be uncaring and unfair. We have reached a political point, that if Congress fails to pass this bill, the morale and confidence in Government will continue to erode and distrust between people will increase.

There is a positive aspect to this compromise, that women can now be awarded punitive and compensatory damages for discrimination. This is a long overdue acknowledgment of the inequities which exist in the work force.

I am also pleased by the fact that included in this compromise is legislation I introduced with Senator DOLE, the Glass Ceiling Act of 1991. By a vote of 96 to 0, the Senate adopted this legislation as an amendment to the compromise. This legislation establishes a Glass Ceiling Commission which is provided with the resources and powers to examine the practices and policies in corporate America which prevents qualified women and minorities from advancement in the business world.

Today we hear a lot about the glass ceiling. Too many people approach the subject as if such barriers to advancement are a natural phenomenon. They are not. Glass ceilings are carefully constructed barriers designed in part, I think, to protect those who have gone beyond them, and in part to keep us from where we know we can go. Women and minorities did not build the ceiling. But we have, for far too long, admired the sunny view of the sky through the glass. Most importantly this legislation establishes the Francis Perkins-Elizabeth Hanford Dole Award to be given to a business that has made substantial efforts to promote opportunities to foster advancement for women and minorities.

What better incentive to businesses across America, than to recognize and reward their original initiatives to recruit, retain, and groom women and minorities for upward mobility.

Mr. Speaker, I will support this compromise because I believe that this is the fairest way to resolve this issue without undue pressure for quota hiring, the erosion of standards in the workplace, and without impeding innocent people to seek their equal protection guaranteed under the Constitution.

Mr. MOODY. Mr. Speaker, I rise in support of the civil rights bill and I urge my colleagues to vote for this much-needed legislation. In 1989 we saw an erosion of longstanding civil rights laws that this civil rights bill will restore and strengthen.

This bill is very similar to the House civil rights bill that we passed earlier this summer. Like the bill that we passed this summer, this bill will overturn five key 1989 Supreme Court decisions and expand the use of compensatory and punitive damages in certain title VII cases. I am pleased to see that the President is now supporting this legislation and has decided to stop frightening the American people by saying the bill will require businesses to rely on quotas. Like the original House bill, this bill will not result in quotas.

Although generally I'm pleased with this bill, I am disappointed in a couple of the provisions that have been severely compromised. These include the provision that exempts the Wards Cove Packing Co., and the provision that places a cap on damages for victims of intentional discrimination on the basis of sex, religion, or disability. These provisions in the bill are not fair and I will be working with other Members to rectify this injustice, but in the meantime we need to pass this legislation and return justice to the many people who have been denied their rights.

It is time to go forward with our civil rights laws, not backward. Between now and the year 2000, 91 percent of the net growth in America's work force will be minorities and women—people who are often discriminated against and denied opportunities. We must assure this segment of our society that they have rights and that they are legally protected.

Since 1964, when Congress enacted the Civil Rights Act, we have improved and strengthened that law. But in 1989 we saw civil rights protections that had been established for many years diminished and denied by several Supreme Court rulings. This bill will restore the intent of our civil rights laws and the Supreme Court's earlier rulings on these rights.

Since the civil rights bill was introduced in 1990, it has gone through many changes during the course of committee markups and leadership negotiations to address the concerns of the business community. It is not an antibusiness bill. It is a bill to ensure constitutional rights.

We need legislation that will protect everyone in our society. No one should be denied opportunities on the basis of race or sex. This civil rights bill is designed to repair the damage of the Supreme Court rulings, ensure that basic civil rights are not denied, and to strengthen the laws to enforce these rights. If we care about the disadvantaged of this country we should act now and pass this legislation.

Ms. SNOWE. Mr. Speaker, the civil rights legislation before us today represents a compromise that is a result of long months of negotiations. While it may not be perfect, it is an important step forward, and I am very pleased to support this bill.

As the law currently stands, women have no Federal protections against discrimination. Perhaps this wouldn't be so important if men and women were treated equally in the workplace. However, with the rampant occurrence of violence against women, sexual harassment, pay inequity, and glass ceiling obstacles, women need civil rights protection more than ever.

With the great influx into the labor force, women have become more experienced and knowledgeable in their jobs. One would expect to see women rise to upper management positions. However, clearly and sadly, this is not the case.

The glass ceiling remains overhead, blocking entry to the highest paid and most powerful positions in companies. Only 3 percent of individuals in upper management positions are women. Additionally, an estimated 30 to 40 percent of working women experience sexual harassment on the job.

I share these statistics with you to emphasize the very real discrimination that exists in the work force. And without damages as a deterrent, discrimination will continue unbridled. This civil rights bill will give women their weapon of self-defense.

Most importantly, the Civil Rights Act reverses nine Supreme Court decisions that set our country back 20 years in civil rights progress by making it more difficult to prove cases of discrimination. By overturning these rulings, the Civil Rights Act will restore the fair and equitable standards of title VII that have worked so well for so many years. And, for the first time, women will be granted the right to sue for damages in cases in intentional discrimination.

Mr. Speaker, Mr. DANFORTH in the other body has taken pains to accommodate the business community and the White House with this compromise. As a Republican representing the State of Maine, I am particularly sensitive to the concerns of small business. And, I sincerely believe that this bill comes the closest to the fine line between deterring discrimination on the one hand, and blocking quotas and not hurting businesses on the other. It is an honest attempt to reinstate protection from discrimination in the workplace, using the same standard that existed between 1971 and 1989.

I am, however, very disappointed that the bill does not extend coverage of employee protection laws to the House of Representatives. A Congress that professes great pride in passing laws to protect workers cannot, with consistency and fairness, fail to apply those same laws to its own operation. As a member of the leadership task force on congressional reform, I will continue to work to eliminate the House's exemption from several employee protection laws.

My colleagues, the administration supports this legislation, the Senate overwhelmingly passed it, and we are on the brink of a new and effective civil rights bill. Let us all accept this compromise and shout loud and clear that discrimination on any basis will not be tolerated.

Mrs. LLOYD. Mr. Speaker, I rise in support of the civil rights compromise. After 2 years of

divisive debate on the issue, this is a day many Americans have long been waiting for.

When President Bush objected to the legislation adopted by the House earlier this year, he did so because he wanted a nonquota bill. After a long and hard fought road, the administration is satisfied that we now have such a bill. What the bill will do is enhance workplace remedies under current law and let us move forward together in progress on civil rights in the Nation.

It does so by countering five key Supreme Court rulings and make it easier for victims of bias to bring lawsuits to enforce antibias protections already on the books. The bill would also allow, for the first time, money damages for victims of harassment and other intentional discrimination based on sex, religion, or disability. It sends a strong message that job discrimination and sexual harassment should be taken seriously.

The compromise could not have come too soon. With the increasing awareness about sexual harassment in the workplace, and racial and religious bigotry, this bill will set a new standard against discrimination and for equal opportunity. It will send a strong signal that discrimination in all forms will not be tolerated and that all Americans in the work force deserve fair and equal treatment.

As a nation this is a standard we must aspire too. We speak often of competitiveness in the global market during these tough economic times, but the United States will never be truly competitive until we redouble our efforts to fashion a work force able to meet the challenges that face them and contribute to the strength of the Nation. By reaffirming our commitment to fair workplace practices, this bill will help assure a productive work force and competitive America into the 21st century.

The strength of our work force lies in its ever-increasing diversity. Women and minorities are being represented in the workplace in greater numbers than ever before. With this bill all Americans should have the opportunity to tap into their full potential.

I urge my colleagues to join with me in supporting passage of the civil rights compromise.

Mr. LAFALCE. Mr. Speaker, I am extremely pleased that a compromise has been agreed to which will enable us to pass the Civil Rights Act of 1991, and obtained the signature of President Bush.

I have always been committed to the passage of a strong civil rights bill, one which would unequivocally reiterate and clarify the longstanding intent of the Congress with respect to this extremely vital area of national employment law.

Such a clarification of congressional intent has been urgently needed since 1989, when a series of Supreme Court cases upset many longstanding civil rights doctrines by taking a rather narrow and literal view of congressional intent. The compromise bill will set the record straight.

It has always been my concern that any bill which we enacted also take into account the legitimate concerns and rights of the millions of men and women who operate businesses across this Nation, especially small businesses who were troubled by the unlimited punitive and compensatory damage provisions contained in the original bill. Many employers also feared that the disparate impact provisions, as originally drafted, would force them to hire workers solely on the basis of race, gender, national origin, or religion, to escape the bill's sanctions.

Finally, I have never wanted the civil rights bill to be a futile political exercise. In view of the fact that the Supreme Court decisions will remain the law of the land until a bill is actually enacted and signed into law, I have always thought it imperative that we pass a bill the President could sign.

It was with these three fundamental considerations in mind that I offered a compromise bill last year which, while overturning the Supreme Court cases, would have alleviated the concerns of both the business community and the administration. I am very pleased to note that the compromise which is before us today is very similar to the bill I offered for consideration in the last session.

On the issue of disparate impact the bill before us overturns Wards Cove versus Atonio by returning the burden of proof to employers to justify by business necessity any employment practices which have been clearly shown to have a disparate adverse impact on women or minorities. My compromise bill would have done the same.

My bill would have defined "business necessity" by using the exact language of the leading case in the area, Griggs versus Duke Power (1971). The bill before us, in essence, does the same by explicitly stating that its purpose is to "codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove.*"

On the issue of damages for intentional discrimination the bill before us places an overall cap on punitive and compensatory damages of $50,000 for employers of 15 to 100, $100,000 for those of 101 to 200, $200,000 for those of 201 to 500, and $300,000 for those of more than 500. My bill, in keeping with traditional labor-management law, would have precluded legal remedies including compensatory and punitive damages, and would have allowed for up to $100,000 in equitable damages in cases of sexual and other harassment, retaliation, or other unlawful employment practices for which the remedy of back pay was not available. It would also have allowed for the additional equitable remedies of injunctive relief, reinstatement, and back pay.

In cases of intentional discrimination in which the discrimination was only one factor motivating the employment decision, my bill would have overturned Price Waterhouse versus Hopkins by allowing an employee or applicant for employment to establish an unlawful employment practice whenever the discrimination was a major contributing factor to the employment decision. The bill before us today likewise allows a finding of unlawful discrimination if discrimination was one of the motivating factors in the employment decision.

The compromise before us, as did my bill, overrules Patterson versus McLean Credit Union to clarify that the term "make and enforce contracts" in 42 U.S.C. 1981 applies not only to hiring practices but also to post hiring employment practices.

The bill before us, again like my bill, would overrule Lorance versus ATT to allow those harmed by discriminatory seniority systems to file suit when the harm occurs even if such harm occurs years after the seniority system is adopted.

My bill would have overturned Martin versus Wilks to prohibit the challenging of a consent decree by any employee or applicant for employment with the employer who had actual notice and an opportunity to challenge the consent decree at the time it was entered. The bill before us goes a bit further and actually prohibits a challenge by any party who had actual notice at the time of the decree or whose interests were adequately represented by a party to the decree.

My bill, like the compromise before us, would have overturned West Virginia University Hospitals versus Casey, a case decided only this year, by allowing the payment of fees for expert witnesses.

Finally, both the compromise before us and my bill would take effect upon enactment, rather than retroactively, as previous versions of the bill had proposed.

Mr. Speaker, in view of the above, it goes without saying that I am in wholehearted support of the compromise before us today. The Civil Rights Act of 1991 now contains a very balanced and progressive approach. It is a worthy fruit of the hard work all of us have put into resolving this issue. It returns our civil rights law to the traditional path. It takes care not to put unnecessary burdens on small employers. And it once again puts the Congress clearly and overwhelmingly on record as the defender of the civil rights of all Americans.

Mr. HOLLOWAY. Mr. Speaker, I rise today to speak in opposition to this so-called civil rights legislation. In light of legislation such as this, Mr. Speaker, why would an American small business even try to go into business? One of the problems of this bill is that it requires employers to demonstrate that they have not engaged in discrimination. Things should be the other way around. An employee who believes he has been wronged, that he has been hurt, that he has been discriminated against, should be required to show how he has been injured. I thought in this country we were considered innocent until proven guilty.

Mr. Speaker, it is conceivable that an angry employee who may or may not have a real gripe, could put a small business out of business through court costs alone. We are supposed to believe that we can support this bill because damages have been capped. But they are capped so high that even if only half is reclaimed, it could bankrupt a business.

This bill would encourage litigation and our courts cannot stand much more. It still puts pressure on employers to hire by numbers. Mr. Speaker, hiring should be based on skills, ability, and need, not color, not sex, not numbers.

Mr. MILLER of California. Mr. Speaker, I rise in oppositon to the Wards Cove exemption, section 22(b) in the Civil Rights Act of 1991. Despite the fact that this bill was designed in part to overrule the Supreme Court decision in Wards Cove, the effect of this section would be to exempt only one company in the entire country from this act—the Wards Cove Packing Co.

This result is unconscionable.

Asian-American and Alaskan Natives have been fighting this case in court for over 17

years. Suddenly, they find themselves forced to meet higher standards than any other victims of race discrimination in the country.

Perhaps if these men and women could afford to hire expensive Washington lobbyists, the Civil Rights Act of 1991 would include them in its coverage.

The Alaska salmon canning industry has had a long history of racial discrimination. Wards Cove Packing Co. itself has received some of the sharpest criticism from individual Supreme Court Justices in any recent discrimination case.

Justice Stevens, writing in dissent for four justices in Wards Cove, wrote:

Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines—bear an unsettling resemblance to aspects of a plantation economy.

Justice Blackmun wrote:

The salmon industry as described by this record takes us back to a kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation discrimination of the old-fashioned sort: a preference for hiring non-whites to fill its lowest-level positions, on the condition that they stay there.

Placing Wards Cove Packing Co. beyond the reach of this civil rights bill is an affront to the minority workers whom the Alaska salmon industry has long confined to menial and low-paying jobs.

It is an affront to the American people and to our notion of justice and equality for Americans.

Mr. FAZIO. Mr. Speaker, I rise in strong support of S. 1745, the Senate-passed Civil Rights Act.

We have been trying to get this civil rights legislation enacted into law for over a year now, and we finally have an administration-endorsed, bipartisan bill that overcomes the roadblocks to civil rights protections that were created by the 1989 Supreme Court decisions.

For the past 2 years, the President and his administration have been practicing the politics of racial divisiveness—pitting varying interest of our culture against each other, instead of looking for the common ground that we all share. The quota argument has been the most egregious example of this political strategy. It has always been a smokescreen; the President and his administration called the bill a quota bill, when it never was. They sabotaged the negotiations between business and civil rights groups. They dismissed the specific antiquota statutory language in the original bill and called it "cosmetic."

But a critical factor has stayed constant throughout the crafting and compromise necessary to finally bring this bill to the floor. Democrats have been fighting both discrimination and reverse discrimination all along. We have been standing with workers and the rights of businesses to hire without discrimination and without quotas, and this bill both says and does just that. The President has finally abandoned his exploitative, divisive tactics and has instead now come to grips with the reality of the civil rights bill.

This legislation reaffirms over commitment to ensuring equal opportunity in the work place and continues our tradition of guaranteeing equality for all. It empowers women and minorities to take on the powerful and provides both victims of discrimination and reverse discrimination with a means to combat it. It makes hiring quotas illegal and drives reverse discrimination out of the work place. This bill restores our legal protections against intentional discrimination in the work place and extends to women, the disabled and religious minorities the same rights that already apply to people of color.

Our Nation's longstanding commitment to equality demands that any discrimination based on race, gender, religion or national origin not be tolerated. Only the strong protections offered in this bill will give victims of employment discrimination an avenue of redress and access to equal justice.

Let's reaffirm our national commitment to civil rights. I urge my colleagues to support this bipartisan effort toward equality for all Americans.

Mr. ESPY. Mr. Speaker, we've traveled a long, bumpy road to get to this legislation today.

And the truth is that after all of the bumps, all of the twists, and all of the turns, we are basically back where we started.

This civil rights legislation is similar to the bill passed by the House in June. It overturns five key decisions by the Supreme Court It restores the Griggs standard of business necessity. It ensures that any hiring practice which has a disparate impact on women, on minorities, on disabled Americans, must be related to their ability to do the job. It makes it clear that intentional discrimination is never permissible under the law.

It is not now, and never has been, a quota bill I am glad that the President has dropped this divisive rhetoric from the debate, and accepted this compromise.

It is also not a prefect bill. This legislation still caps the damages available when intentional discrimination is based on sex, or religion, or disability, which says that is not as important as discrimination based on race.

But this legislation will send a message to all Americans that discrimination is wrong. And it will once again put the force of the law on the side of those who are victims of discrimination—regardless of race, creed, sex, or color.

This legislation is good for our Nation, it's good for all Americans—and I urge my colleagues to give it their total support.

Mr. HOAGLAND. Mr. Speaker, the Civil Rights Restoration Act represents the American belief in the equality of rights and opportunity that are so basic to our form of government. This bill should have become law last year, but it was vetoed by President Bush. Even though the votes in both the House and Senate were there to pass it, there were not enough votes to override his veto.

The Civil Rights Act has worked well. It has given hope, opportunity, and redress for millions. But Congress has the responsibility to update the law and to prevent its erosion by the courts. That is why we are acting on this bill today.

The Civil Rights Act is really a human rights act. It reinforces the basic principles of our Constitution which every American holds dear: the right to fair and equal opportunity in all aspects of American life.

This bill should be especially welcomed by women because it will give women new tools to fight discrimination in the workplace, like sexual harassment.

One of the most disheartening aspects of the civil rights bill over the last year has been the rhetoric and inflammatory tactics that have been used against it. The civil rights bill is a human rights bill. It is not a bill for blacks, whites, or any other color. It is a bill for all of us. It should be a bill that brings us all together, that returns us to the basic values of fairness and equal opportunity that every American cherishes.

In 1965, our Nation was in turmoil. There were demonstrations—even deaths—over segregationist practices in places like schools, buses, factories, restaurants, and swimming pools. The civil rights law was stimulated by and responded to acts of blatant discrimination like refusal to rent on the basis of race or the refusal to promote on the basis of sex. Today, the discrimination is often not so obvious. Discrimination is often shrouded by comments like "He's not a team player." "He cannot get along with people." "She's not the 'right type'."

In the Persian Gulf war was a stark reminder of how basic the principle of equality is to our laws. There was no discrimination on the battlefield. As General Schwarzkopf told the Congress, the blood that was spilled on the battlefield was all the same color. All were called and all served, without regard to race, gender, religion, or ethnic background. Now that the war is over, we must be sure that those who were called and who served, will have equal opportunity in the workplace at home. It is time to reaffirm basic equality of rights at home.

Former President Jimmy Carter put it well:

We measure the real meaning of America in our intangible values—values which do not change: our care for each other, our commitment to freedom, our search for justice, our devotion to human rights and to world peace, and the patriotism and basic goodness of our people.

The bill before us today represents years of work, debate, and compromise on all sides. It is a test of the basic goodness of our people. I urge the House to pass it.

Mrs. COLLINS of Illinois. Mr. Speaker, faced with little choice in the matter, I rise in support of the Senate compromise on the civil rights bill. While it is not the vehicle that I would prefer, it is undoubtedly the best that we will be able to enact.

We have tried over the years, through various statutes and court decisions, to eliminate race- and gender-based discrimination in this country. And some progress was being made until the Supreme Court reversed several key decisions that had stood to assist employees in redressing job discrimination.

However, after the Court ruled in the Patterson, Wards Cove, Lorance and Price Waterhouse cases, job equality became illusory, employment protections became a myth, and judicial remedies were even further obstructed by insurmountable barriers. The Court disregarded both the letter and the spirit of Congress' efforts and years of judicial precedence.

What we attempted to do in the last Congress, and are again attempting this year, is to level the playing field once again for employees who have been the victims of discrimination. If the civil rights compromise before us is adopted, we will once again have laws on the books that are there to ensure that blacks, other minorities, and women have an equal shot at fair employment practices. It will once again be illegal to make an employment decision, harass, fire, demote, or refuse to hire anyone based on specious grounds such as race or gender.

While this measure is a definite improvement over the current state of affairs, I am concerned that there are glaring omissions in it and I wish we had been allowed at least a modified rule to address these concerns. To begin with, the compromise definition of what is a business necessity is far too weak. The language in H.R. 1 addressing the right of employers to make employee decisions based on business necessity says that employment practices must bear a "significant and manifest relationship to the requirements for effective job performance." This is much stronger and gives employers far less "wiggle" room within which to discriminate against employees than the standard set in the compromise which states that employment practices must simply be "job related and consistent with business necessity." Further, it is the "purposes" section of the compromise that speaks to the codification of "business necessity" and "job related" as outlined in the Griggs decision. However, it is significant that this is not stated in the statutory language of the compromise and that it does not expressly overturn the Wards Cove decision as I would have preferred. Therefore, it appears that employers will still be able to defend themselves in a discrimination suit by showing that an apparently neutral employment practice, that in fact does discriminate, has some business reason. Without the language mandating that employers show that an employment practice bears a significant relationship to effective job performance, employees will be at a critical disadvantage in these so-called disparate impact cases. The stronger definition is necessary so that an employer cannot arbitrarily justify actions as a business necessity when the primary motivation is a discriminatory one.

In addition, I would much prefer to see a measure that does not contain caps on compensatory and punitive damages as is in this compromise. It is obvious by the number of job discrimination suits currently pending that employers are more than willing to violate the law and employee's rights. We have to send a clear signal that Congress is serious about halting job discrimination and one way to do that is to impose penalties that will make employers think twice about the financial consequences of violating the law. If employers will not do the right thing for its own sake, maybe they'll do it for the sake of their pocketbooks.

It is long past due that this Congress and the administration enact a new civil rights bill. We talk a lot in America about this being a beautiful mosaic of cultural diversity, and the land of equal opportunity. Yet, we foster prejudice when we sit back, do nothing and allow employers to deny a job, promotion, raise or benefit to an employee based solely on race or sex. I urge my colleagues to support this compromise, though imperfect, and let us take another step toward helping this Nation live up to its stated ideals.

Mrs. BOXER. Mr. Speaker, I support this much needed and long overdue civil rights bill which got caught up in ugly politics. It will go a long way to eradicating discrimination in the workplace and to ensuring that all Americans are able to live up to their potential.

But, there is also much that this civil rights bill does not do, and we must continue to push, cajole, and educate until there is justice and fairness for everyone.

The civil rights bill before us compromises women's rights by placing a cap on compensatory and punitive damages in sex discrimination cases. By this action, over half of America's work force—working women—are prevented from obtaining equal treatment under the law. It also subjects religious minorities and disabled individuals to this cap.

Additionally, the civil rights bill exempts the Wards Cove Packing Co. from its provisions. Its employees will be the only workers in America who will not benefit from the civil rights bill. We must correct this injustice, especially since it was a lawsuit brought by the employees of this company which became the basis for the Civil Rights Act.

Now is the time to pass the Civil Rights Act. Afterwards, we must continue our commitment by passing separate legislation to correct these specific issues. Only then will we have truly acted to uphold the rights of all American workers.

Mr. DIXON. Mr. Speaker, we fought the battles of injustice and discrimination some 25 years ago, with the passage of the first major Civil Rights Act in 1964. We now find ourselves fighting that battle again, reversing Supreme Court decisions that essentially say its alright to discriminate against racial and sexual minorities. But it is not alright for employers to discriminate against a person because of their race, color, origin, sex, nationality, or any of the things that make us unique.

Today, we have the power to overturn these decisions by voting for the compromise. Our vote not only returns the civil rights protections that existed prior to the 1989 Supreme Court decisions, but would provide adequate remedies and more effective deterrence in job bias cases.

Mr. Speaker, after months of racial politicing and threats of more vetoes by the administration, we now have a compromised version of the previously House-passed Civil Rights Act of 1991, (S. 1745). Although a weaker bill, this legislation will give the House another opportunity to restore necessary employment protections that were substantially eroded by five 1989 Supreme Court decisions which placed severe restrictions on Federal Antidiscrimination laws.

The measure before us is a compromise and therefore not a perfect bill. It does not address every aspect of ending employment discrimination, nor does it contain every provision that was included in the much stronger civil rights bill that passed the House last June. It does, however, begin the process of reversing the Court's decision affecting employment discrimination.

I strongly opposed the Supreme Court's attempts to sharply curtail the scope and effectiveness of Federal civil rights laws that provide very important protections against employment discrimination. Unless these decisions are overturned, we will let stand an undermining of the basic standards of fairness and equal justice for racial and ethnic minorities and women.

On the issue of business necessity, the compromise bill overturns the Wards Cove versus Atonio Case by restoring the burden of proof to the employer to prove that an employment practice that has a disparate impact on women or minorities is required by business necessity. It also contains a modified version of the House bill's provisions overturning the standard of business necessity in Wards Cove, by providing that an employer must show that an employment practice with disparate impact is job-related for the position in question and consistent with business necessity.

The compromise sets limits on the compensatory and punitive damages women and minorities could win ranging from $50,000 for companies with 100 or fewer workers to $300,000 for employers with 500 or more workers. The bill also permits jury trials for victims of bias.

Although I support this measure in its current form, I am opposed to the imposition of caps on compensatory and punitive damages in gender discrimination cases. It would not allow women and religious minorities to obtain the same compensatory remedies for employment discrimination as is available under current law to racial minorities. I prefer no caps, even though I know that a cap will provide a broader vote in the House. I remain hopeful that legislation will be introduced at some point to lift the caps.

The compromise also bars racial harassment and other forms of bias that occur after a person is hired, as well as spells out the rules under which third parties could challenge a consent decree in an antidiscrimination suit. In these instances, third parties would have to have been notified beforehand that the agreement might hurt their interest and have had the opportunity to object.

Further, the compromise would make clear that an employer may not make an employment decision based in any way on race, color, religion, sex, or national origin, regardless of whether other factors also motivated the decision. The bill also allows workers challenging a seniority system as discriminatory to wait until the adverse impact of the system is felt to bring a lawsuit.

Finally, the compromise bars the adjustment or norming of test scores by racial or other classifications.

Protecting the civil rights of those most vulnerable in our society is not an easy task but it is the right thing to do. In fact, the highest court in the land has committed serious damage to civil rights laws that were designed to protect equal employment opportunity at the job-site for all Americans. But the work of the Congress is clear whenever fair employment opportunities are stifled by employers or the courts.

As an original cosponsor of the Civil Rights Act of 1990 and 1991, I am hopeful that Mem-

bers will do the right thing and support this compromise. It is not a perfect compromise, but even with its shortcomings, it's better than no bill at all.

Mr. SANTORUM. Mr. Speaker, I rise in strong opposition to this rule, House Resolution 270, providing for consideration of the civil rights legislation (S. 1745). In recent weeks, it has become abundantly clear that we here in the Congress operate under a double standard. The Congress has a very sour history of exempting itself from the same rules and regulations that we impose on the rest of society. To date, the Congress has exempted itself from the Social Security Act of 1933, the National Labor Relations Act, the Minimum Wage Act of 1938, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Freedom of Information Act of 1966, the Age Discrimination Act of 1967, the Occupational Safety and Health Act of 1970, the Equal Employment Opportunity Act of 1972, title 9 of the Higher Education Act Amendments of 1972, the Rehabilitation Act of 1973, the Privacy Act of 1974, the Age Discrimination Act Amendments of 1975, the Ethics in Government Act of 1978, the Civil Rights Restoration Act of 1988, and the Americans with Disabilities Act of 1990. Today, we will be adding the 1991 Civil Rights Act to this list.

The civil rights legislation, which will be considered should this rule pass, contains two very glaring omissions that must be corrected by this body. First, the bill provides no symmetry between the House and Senate with regard to the processing of discrimination complaints. Whereas the bill will permit Senate employees to appeal complaint decisions to the courts, the bill requires House employees to handle these appeals internally within the House. Second, the bill does not expand the same protection to State and local governments that we enjoy here in the Congress. Due to the nature of our work, we are permitted to consider party affiliation and political compatibility in reviewing prospective employees. We do not, however, provide this same protection for State and local legislators. Again, the Congressional shield goes up.

I find it particularly ironic that we are considering this rule on the same day as the introduction of legislation by Mr. DANNEMEYER eliminating the Congressional immunity we have given ourselves with respect to the previously mentioned laws. As an original cosponsor of Mr. DANNEMEYER's Congressional Accountability Act, I cannot support this "add it to the list" rule. Mr. Speaker, you are asking this body to pass this rule and subsequently vote on a bill that you admit "has serious flaws of omission as well as other flaws that may need correction." Our constituents deserve better and the constituents of Pennsylvania's 18th Congressional District, which I represent, demand that we stop our "fix it later" attitude.

Mr. Speaker, I understand the importance of passing civil rights legislation, and I intend to support passage of a bill. We now have the opportunity, however, to make the necessary technical changes to S. 1725. In our haste to enact this legislation, we are only furthering the Congressional double standard.

Mr. COLEMAN of Texas. Mr. Speaker, although I strongly support this bill and will support it upon final passage, I am going to rise in opposition to this resolution to express my outrage at the special exemption we are being forced to provide for the Wards Cove Packing Co. The suit brought against this company was one of the original reasons for this legislation and in my opinion it is a perversion of justice for the Congress to single out these plaintiffs and tell them that these measures will apply to every case except theirs. We should not allow the Bush administration to force us into collusion with those who would violate the civil rights of 2,000 minority cannery workers. Those workers deserve our support.

Mr. SERRANO. Mr. Speaker, for 2 years this House struggled to produce a strong civil rights bill, a bill with one goal, to promote equal opportunity for all Americans regardless of race, gender, religion, or ethnicity. This is the day. Why then are we voting lamentably and with reservations for this bill?

First, that there should be a need for such legislation in this country in the 1990's is a disgrace. Second, that this legislation required further crafting and deliberate weakening, lest it meet the disapproval of a President with delusions of quotas, is a shame and an embarrassment. Little wonder that we vote our approval with a note of sadness. The bill does, of course, include a number of worthwhile measures.

An amendment I sponsored has been incorporated into this legislation. It would address Hispanic and other underserved minority groups whose cases of employment discrimination have not been actively investigated by the Equal Employment Opportunity Commission. This provision seeks to provide minorities and women with the very opportunity that the EEOC was created to protect—not preferential treatment.

Mr. Speaker, I am especially pleased that the other body deemed to include this amendment language directing the EEOC to fulfill its existing statutory mandate to uncover and put an end to widespread discrimination. It is imperative that the EEOC allocate adequate resources to service the Hispanic community, and to establish better communications between the EEOC and community-based Hispanic organizations.

It is incredible that with all the desperate problems Americans face today—unemployment, lack of health care, homelessness, lead poisoning, and drug-related crimes—that we are still confronting the ugly issues of discrimination. It is time for Americans from diverse backgrounds to put this behind us forever.

Mr. DOOLITTLE. Mr. Speaker, I strongly oppose S. 1745 which, despite its public relations claims to the contrary, is not a good compromise—it is simply an injurious concession.

And, no matter what proponents may say to the contrary, this legislation remains a quota bill.

Earlier this year, I opposed H.R. 1 because it contained several unacceptably flawed provisions. As I review the so-called compromise, I am at a loss to discern how those objectionable conditions have been removed.

Both the House and Senate bills place an impossibly complex burden of proof on employers to disprove any discrimination charge. This burden of proof reversal is my greatest objection to the bill.

To quote the president of the U.S. Chamber of Commerce,

> the (compromise) makes it easier for employers to be sued and more difficult to defend against a suit.

An equally chilling criticism was set forth in the Wall Street Journal by L. Gordon Crovitz:

> The (compromise) reverses the burden of proof, adding insult to lawsuit by refusing to define business necessity ("Bush's Quota Bill: Dubious Politics Trumps Legal Principle." October 30, 1991).

That failure to define business necessity constitutes another serious flaw, virtually guaranteeing ongoing years of costly litigation. The courts will be forced to determine the impossible: What did Congress mean when it deliberately withheld such an important definition?

My colleagues are all aware that this legislation was introduced to overturn a series of civil rights decisions made by the Supreme Court in 1989, most notably the Wards Cove decision.

Although Wards Cove was specifically exempted by the compromise, employers today should be warned by the Wards Cove example: For some 20 years, the company has been harassed by lawsuits alleging employment discrimination. During that same time, no court—including the Supreme Court—has ever found the company guilty of any discrimination.

Indeed, the company had 240 percent as many minority employees in its skilled labor positions than their representation in the relevant labor market. However, because there was a disparity between the number of minorities in supervisory positions versus the number in unskilled positions, the company has spent millions of dollars defending itself.

To quote again from the Wall Street Journal article, the disparate-impact approach "starts with the assumption that there is 'discrimination' unless every job filled by every employer perfectly reflects—no less and no more—the available labor pool."

With this compromise, we will be providing for the codification of disparate impact for the first time.

The compromise purports to require that, generally, those bringing suit must specifically cite the practice resulting in disparate impact. However, the bill allows employees who cannot isolate a particular practice to challenge an employer on a broader basis. Since the only way to measure disparate impact is through employment statistics, it follows that the only really safe employment practice would be to achieve exact statistical balance, arrived at through the use of quotas.

Employers cannot win for losing: If they employ insufficient numbers of women or minorities, they must be prepared to provide costly and time-consuming justifications for their hiring practices.

And, since employers would be deemed guilty until proven innocent, it would be difficult—if not impossible—to prove themselves innocent unless their companies had in place a system of racial and gender-based quotas.

It shouldn't take employers long to figure out that the easiest and safest approach is to hire by the numbers. More qualified employees of the wrong gender or race will have to step aside in favor of those mandated by quotas.

The burden-shifting provisions in this bill alone would make me oppose it. The bill's failure to define business necessity confirms that opposition.

The original bill was nicknamed "The Lawyer's Bonanza Act" for good reason. This compromise is not much better.

Employers who are found guilty can expect to pay for pain and suffering and punitive as well as pecuniary damages of up to $300,000, depending upon the number of workers employed. Those employers would also confront tens of thousands of dollars in legal fees.

This bill is no way to battle discrimination. The way to end discrimination is to tear down barriers, not erect new ones.

When Martin Luther King argued for civil rights over 20 years ago, he envisioned a society in which people would be judged by the content of their character rather than race, ethnicity, gender, relevant labor pools, or meaningless statistics.

Now, regretfully, we are considering a bill which would force employers to hire based on the numbers, reverse the traditional concept of "innocent until proven guilty," guarantee a morass of costly litigation, and invalidate merit as the basis for employment or advancement.

I believe this compromise is an insult to the true concept of civil rights, and I strongly oppose it.

Mr. DOOLITTLE. Mr. Speaker, I strongly oppose S. 1745 which, despite its public relations claims to the contrary, is not a good compromise—it is simply an injurious concession.

And, no matter what proponents may say to the contrary, this legislation remains a quota bill.

Earlier this year, I opposed H.R. 1 because it contained several unacceptably flawed provisions. As I review the so-called compromise, I am at a loss to discern how those objectionable conditions have been removed.

Both the House and Senate bills place an impossibly complex burden of proof on employers to disprove any discrimination charge. This burden-of-proof reversal is my greatest objection to the bill.

To quote the President of the U.S. Chamber of Commerce, "the compromise makes it easier for employers to be sued and more difficult to defend against a suit."

An equally chilling criticism was set forth in the Wall Street Journal by L. Gordon Crovitz: "The compromise reverses the burden of proof, adding insult to lawsuit by refusing to define business necessity."[1]

That failure to define business necessity constitutes another serious flaw, virtually guaranteeing ongoing years of costly litigation. The courts will be forced to determine the impossible: What did Congress mean when it deliberately withheld such an important definition?

My colleagues are all aware that this legislation was introduced to overturn a series of civil rights decisions made by the Supreme Court in 1989, most notably the Wards Cove decision.

Although Wards Cove was specifically exempted by the compromise, employers today should be warned by the Wards Cove example: For some 20 years, the company has been harassed by lawsuits alleging employment discrimination. During that same time, no court—including the Supreme Court—has ever found the company guilty of any discrimination.

Indeed, the company had 240 percent as many minority employees in its skilled labor positions than their representation in the relevant labor market. However, because there was a disparity between the number of minorities in supervisory positions versus the number in unskilled positions, the company has spent millions of dollars defending itself.

To quote again from the Wall Street Journal article,[2] the disparate-impact approach "starts with the assumption that there is 'discrimination' unless every job filled by every employer perfectly reflects—no less and no more—the available labor pool."

With this compromise, we will be providing for the codification of disparate impact for the first time.

The compromise purports to require that, generally, those bringing suit must specifically cite the practice resulting in disparate impact. However, the bill allows employees who cannot isolate a particular practice to challenge an employer on a broader basis. Since the only way to measure disparate impact is through employment statistics, it follows that the only really safe employment practice would be to achieve exact statistical balance, arrived at through the use of quotas.

Employers cannot win for losing: If they employ insufficient numbers of women or minorities, they must be prepared to provide costly and time-consuming justifications for their hiring practices.

And, since employers would be deemed guilty until proven innocent, it would be difficult—if not impossible—to prove themselves innocent unless their companies had in place a system of racial and gender-based quotas.

It shouldn't take employers long to figure out that the easiest and safest approach is to hire by the numbers. More qualified employees of the wrong gender or race will have to step aside in favor of those mandated by quotas.

The burden-shifting provisions in this bill alone would make me oppose it. The bill's failure to define "business necessity" confirms that opposition.

The original bill was nicknamed "The Lawyer's Bonanza Act" for good reason. This compromise is not much better.

Employers who are found guilty can expect to pay for pain and suffering and punitive as well as pecuniary damages of up to $300,000, depending upon the number of workers employed. Those employers would also confront tens of thousands of dollars in legal fees.

This bill is no way to battle discrimination. The way to end discrimination is to tear down barriers, not erect new ones.

When Martin Luther King argued for civil rights over 20 years ago, he envisioned a society in which people would be judged by the content of their character rather than race, ethnicity, gender, relevant labor pools, or meaningless statistics.

Now, regretfully, we are considering a bill which would force employers to hire based on the numbers, reverse the traditional concept of innocent until proven guilty, guarantee a morass of costly litigation, and invalidate merit as the basis for employment or advancement.

I believe this compromise is an insult to the true concept of civil rights, and I strongly oppose it.

Mr. SCHEUER. Mr. Speaker, I rise in strong support of S. 1745. This bill will restore valuable rights to the victims of employment discrimination.

I am delighted to see that President Bush has finally seen the light on this issue. Last Congress, we passed a fair and effective civil rights bill which the President vetoed. This year we introduced a new civil rights bill which attempted to address the President's concerns, but he still wasn't satisfied. We wanted to work with him to fashion a bill we all could live with, but he insisted on raising the false specter of quotas. His Chief of Staff, John Sununu, even went so far as to sabotage negotiations on this issue between business leaders and the civil rights community. The American people wanted an effective and fair civil rights bill, but the Bush administration went out of their way to prevent them from getting one.

This past June the House passed H.R. 1, which the President once again labeled a quota bill. Well, something miraculous happened between then and now. The President decided it was time to start negotiating on a bill and stop getting in the way.

He put the quota bogeyman to rest and now we have a good bill, one very similar to the version of H.R. 1 we passed in the spring. This bill will protect the rights of American workers without unduly burdening American businesses.

Mr. Speaker, I want to congratulate the chairman, Mr. BROOKS, and the ranking minority member, Mr. FISH, for their fine work in this area, and I especially want to thank and congratulate those Republicans in the other body who convinced Mr. Bush to come to the bargaining table and get serious about this issue.

Mr. ATKINS. Mr. Speaker, I rise today to voice my objection to the fact that the compromise Civil Rights Act places a cap on damages available for victims of discrimination on the basis of sex, religion, or disability. This provision not only treats women as second-class citizens, it may very well prove to be unconstitutional. Furthermore, such a cap is particularly provocative in light of the awareness that has been generated in Congress and across the Nation on sexual harassment as a result of the Clarence Thomas hearings.

Mr. Speaker, we have made some progress on sexual discrimination in the civil rights bill which is before us. The President's original civil rights proposal offered damages only for sexual harassment, and not for other cases of sexual discrimination. Because this bill improves upon existing law, I do not plan to vote against it. However, I have heard from many of my constituents who argue that these caps are a slap in the face to the women, disabled, and religious minorities of this country. Mr. Speaker, I agree with those constituents.

Earlier this year, the House considered an amendment which would have lifted caps on punitive damages for sexual discrimination. At that time, my colleague, Representative PATRI-

[1] "Bush's quota bill: Dubious Politics Trumps Legal Principle." Oct. 30, 1991.

[2] Ibid.

CIA SCHROEDER, stated that capping damages for sexual discrimination sets "a dangerous precedent by creating a two-tier damages system." Victims of intentional racial discrimination are already capable of claiming unlimited compensatory and punitive damages under a post-Civil War law, but victims of discrimination based on sex, disability, and religion are limited. Representative SCHROEDER said that by capping damages, we are "condemning ourselves to two kinds of discrimination in this country: the kind we will not tolerate—racial—and the kind we will—sex, religious, and disability discrimination." And capping damages for women, people with disabilities, and religious minorities may result in a later attempt to cap damages for racial minorities as well.

Proponents of these limits argue that without a cap, lawyers would be free to gain even more money than they already make and that businesses will be burdened with the expense of unnecessary legal fees. Mr. Speaker, given the existing precedence on racial discrimination cases, nothing can be further from the truth. Civil rights law frequently require lawyers to work on a contingency-fee basis, which is hardly a lucrative practice and is increasingly unpopular. Furthermore, the number of racial discrimination cases has dropped in the past 2 years and less than 1 percent of these cases over the last 10 years resulted in judgments over $100,000. These three cases were large because of egregious and malicious intentional discrimination.

Mr. Speaker, the discrimination women experience on the job is very real. It has economic repercussions; it creates serious morale problems in the workplace; and it is against the law. Even the Bush administration's Labor Department has spoken of the glass ceiling that many American women experience in job promotion. Women are a growing part of America's work force, and report after report demonstrate statistically that there is a gap between the pay women get on the job and the pay that their male counterparts receive. Also, the Equal Employment Opportunity Commission [EEOC] has 100,000 sexual harassment charges on file from last year, a 30-percent increase over the past 5 years.

By capping damages for sexual and religious discrimination, we are limiting access to equal justice for all, and we are condemning women, the disabled, and religious minorities to second-class status. Mr. Speaker, although I realize that the caps provision is a result of a compromise so that the President will not once again veto the civil rights bill, I protest in the strongest possible terms that it has been left to stand in the Civil Rights Act. The battle should not and will not end here.

Mr. FALEOMAVAEGA. Mr. Speaker, Senate passage of the civil rights bill was definitely a victory for civil rights groups, however, the compromise bill contains a serious flaw.

The bill will overturn five 1989 Supreme Court decisions that made it harder for workers to sue employers in job discrimination cases. And it will permit women to sue for limited damages for intentional discrimination.

However, the other body managed to slip in a one sentence amendment that would exempt the parties involved in Wards Cove Packing Co. versus Atonio, the very Supreme Court decision the new act is intended to overturn.

The amendment which exempts the Ward Cove Co. of Alaska, affects 2,000 Alaskan cannery workers, who were primarily Filipino-Americans, Japanese-Americans, Samoan-Americans, and Alaskan Native Americans. This bill makes them the only workers in this Nation cut out of protection.

Fair is fair and this kind of lawmaking stinks.

Asian/Pacific-Americans and Alaskan Natives have been fighting this case in court for over 17 years and cannot afford to hire a lobbyist to fight their case. Wards Cove, on the other hand paid a Washington law firm $175,000 to fight for this miscarriage of justice.

Wards Cove would be exempt despite the fact that the company not only had a strictly segregated work force, but segregated sleeping quarters and dining facilities as well.

The Rules Committee last night ruled against an amendment drafted by the distinguished gentleman from Washington, JIM MCDERMOTT, to strike the provision exempting Wards Cove from the Civil Rights Act.

According to the distinguished gentleman from Massachusetts, JIM MOAKLEY, the White House has threatened to veto any amendments to the bill. This is another flagrant case where expediency has taken precedent over justice.

I am grateful to the distinguished gentleman from Washington for his sensitivity on this matter and ask my colleagues, in the name of justice, to defeat the rule and allow the amendment to stand.

I submit the following articles for my colleagues to further understand what is at stake here:

[From the Washington Post, Oct. 31, 1991]

JOB DISCRIMINATION BILL WOULD NOT APPLY TO CASE AGAINST SEATTLE-BASED CANNERY

(By Ruth Marcus)

There is one undoubted loser in the two-year battle to undo the Supreme Court's 1989 decision in Wards Cove Packing Co. v. Atonio: the former cannery workers who challenged Wards Cove's practices.

The Seattle-based company mounted a successful lobbying campaign to make certain that the new job discrimination law would not apply to the 17-year-old lawsuit still pending against it, in which Alaska Natives and Filipinos complain the company steered them into lower-paying jobs.

The special exception in the Senate-passed civil rights bill for Wards Cove would significantly diminish chances of success for the lawsuit, which was sent back to lower courts after the company won at the Supreme Court.

Wards Cove paid a Washington law firm nearly $175,000 in lobbying fees during the past two years, according to disclosure forms.

Alaska Sens. Frank H. Murkowski (R) and Ted Stevens (R) went to bat for the company, a substantial employer in the state, threatening to vote against the bill if it did not protect Wards Cove.

The end result was this odd provision, buried in Section 22(b) of the bill: "Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after Oct. 30, 1983."

That provision, as Murkowski explained in an Oct. 15 "Dear Colleague" letter, applies only to the Wards Cove case.

That means the plaintiffs in the case would be forced to litigate it under the restrictive interpretation of the federal employment discrimination law that the Supreme Court adopted two years ago and that the Senate has now rejected.

The Alaska senators, and the company's lawyer, say that is "a matter of simple justice," as Murkowski put it on the Senate floor last year. The company, they argue, has spent $2 million defending itself against the lawsuit, and has been found not liable under the law as it existed before the Wards Cove decision as well as after it.

"It's not as if the plaintiffs have not had their day in court. They've had eight different days in court," said the company's lawyer, George J. Mannina Jr., referring to eight court rulings on the case.

"Wards Cove is an old case. It was decided after a long battle. It was many years old," Stevens said in an interview yesterday. "To have a retrial of it under the circumstances is just wrong."

But Sen. Brock Adams (D-Wash.) assailed the provision in a speech on the Senate floor yesterday as an "inside deal" that "represents special interest legislating at its worst." He said it would protect the company at the expense of its former workers rather than forcing it to "play by the same rules as every other" employer charged with discrimination.

"Unlike Wards Cove Packing Company, Frank Atonio [the lead plaintiff in the case] didn't have the money to hire a Washington, D.C., lobbyist to look out for his interests," Adams said.

In a letter to Adams, Atonio said that as a worker at Wards Cove salmon canning plant he was housed in racially segregated bunkhouses and fed in racially segregated mess halls. "I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage," he said. "I would appreciate your asking the sponsors (both Republican and Democrat) how they can justify this special exemption."

Sen. Edward M. Kennedy (D-Mass.), the principal Democratic architect of the bill, fought the provision last year. But this year he accepted the provision in an effort to stave off an even broader exception.

"The administration tried to prevent all victims of discrimination with cases currently pending in the courts from obtaining the benefit of the bill," said Kennedy's spokesman, Paul Donovan. "Sen. Kennedy was able to convince them to drop this broad provision. Unfortunately, he was not able to convince them to drop it for the Wards Cove case itself."

The chief Republican sponsor, Sen. John C. Danforth (Mo.), believes the bill does not apply to other pending cases in addition to Wards Cove, said his spokesman, Steve Hilton.

Hilton said Danforth agreed to the Wards Cove exception because he viewed the case as a weak one that should not be used to test to contours of the new law.

[From the Seattle Times, Nov. 4, 1991]

CIVIL RIGHTS FOR SOME—STEALTHY AMENDMENT SELLS OUT CANNERY WORKERS

Senate passage of the civil-rights bill last week was a victory for civil-rights groups. But the compromise bill is not without a disturbing flaw.

The bill will overturn five 1989 Supreme Court decisions that made it harder for workers to sue employers in job-discrimination cases. And it will permit women to sue

for limited damages for intentional discrimination.

However, Senate Republicans managed to slip in a one-sentence amendment that would exempt the parties involved in Wards Cove Packing Co. v. Atonio, the very Supreme Court decision the new act is intended to overturn.

Sen. Frank Murkowski, R-Alaska, drafted the amendment to make the plaintiffs in the Wards Cove case—Filipino cannery workers in the company's Alaska plant—the only workers in the nation cut out of protection.

Fair is fair. This kind of lawmaking stinks.

Washington Sen. Brock Adams said on the Senate floor that Murkowski's one-sentence amendment "turns the Civil Rights Act of 1991 into the Wards Cove Relief Act." Democratic negotiators swallowed the deal anyway, sacrificing the interests of the cannery workers to get the package through.

Now it turns out that Murkowski's stealthy exemption was inadvertently left out of the bill on final passage out of the Senate. When the error was noticed last Thursday, Adams blocked efforts to bring the bill back for a quick revision.

In all likelihood, the Wards Cove exemption will be tacked back onto the Senate bill this week. When the bill moves to conference committee, House members should reject this egregious act of special-interest lawmaking. Wards Cove should play by the new rules like everybody else.

NORTHWEST LABOR AND EMPLOYMENT LAW OFFICE,
Seattle, WA, October 28, 1991.

Senator BROCK ADAMS,
Hart Senate Office Building,
Washington, DC.

Re Danforth-Kennedy Civil Rights Act of 1991.

DEAR SENATOR ADAMS: I am an attorney for the plaintiffs in Wards Cove Packing Co. v. Atonio.

I am writing about §22(b) of the pending Civil Rights Act of 1991, which reads,

"Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983.[1]

The clear aim of this provision is to exclude Wards Cove from coverage, despite the fact the bill was designed in part to overrule the Supreme Court decision in Wards Cove.

The provision apparently has its genesis in an amendment Senator Murkowski offered to the Civil Rights Act of 1990. He wrote at the time,

"During Senate consideration of S. 2104, the Civil Rights Act of 1990, I intend to offer an amendment that will inject a much needed element of fairness into the bill.

"As presently drafted, Section 15 of S. 2104 would apply retroactively to all cases pending on June 5, 1990, regardless of the age of the case. My amendment will limit the retroactive application of S. 2104 to disparate impact cases for which a complaint was filed after March 1, 1975.

"*To the best of my knowledge, Wards Cove Packing v. Atonio is the only case that falls within this classification.*" (Emphasis added.)

For your convenience, I am attaching a copy of Senator Murkowski's July 11, 1990 letter to his colleagues.

Similarly, a question and answer sheet Senator Murkowski circulated at the time says:

Q. Why does the amendment use a March 1, 1975 date?

A. *The date is keyed to the date the final complaint was filed in the Wards Cove case.* (Emphasis added.)

For your convenience, I am attaching a copy of the question and answer sheet.

Senator Murkowski later added the words "and for which an initial decision was rendered after October 30, 1983" to the amendment to ensure only Wards Cove would be affected. The initial decision on the merits after trial in Wards Cove was filed on November 4, 1983.

Clearly, the provision operates as a piece of special legislation for Wards Cove Packing Company, a firm which apparently financed a wide-scale lobbying effort for the provision.

I have three principal concerns about this provision.

First, the provision undermines precisely the ideas of fairness and equality the civil rights bill is at least partially intended to restore. It tells people an act designed to ensure evenhanded treatment can still be bent for the benefit of special interests.

Even if the civil rights bill could accommodate special rules for individual employers, Wards Cove Packing Company would be a poor candidate for such special treatment.

The Alaska salmon canning industry has had a long history of racial discrimination. Wards Cove Packing Company itself has received some of the sharpest criticism from individual Supreme Court justices in any discrimination case in memory.

Justice Stevens, writing in dissent for four justices in the case, wrote:

"Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines—*bear an unsettling resemblance to aspects of a plantation economy. Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 644 n. 4 (1989). (Emphasis added.)

Similarly, Justice Blackmun, wrote:

"The salmon industry as described by this record *takes us back to a kind of overt and institutionalized discrimination we have not dealt with in years; a total residential and work environment organized on principles of racial stratification and segregation.* . . . This industry has long been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there." *Id.* at 662. (Emphasis added.)

The Court of Appeals also found Wards Cove Packing Company's practices vulnerable to challenge under Title VII, writing,

"Race labelling is pervasive at the salmon canneries, where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouses.'"

Atonio v. *Wards Cove Packing Co.*, 827 F.2d 439, 447 (9th Cir. 1987. And other lawsuits involving racial discrimination in the Alaska salmon industry have resulted in broad findings of liability.[1]

Placing Wards Cove Packing Company beyond the reach of the civil rights bill would be an affront to the minority workers—many from Washington—whom the Alaska salmon industry has long confined to menial and low paying jobs.

Second, *Wards Cove* is an ongoing case which ought not be decided on the basis of special legislation urged by an individual employer. An appeal in the case is currently pending before the Ninth Circuit.

When the case is finally decided, it should be decided on the same rules which apply to other cases.

The civil rights bill—including the disparate impact section—was designed to at least partially restore civil rights law to the settled condition it held for years before the Supreme Court's October 1988 term. Given the concern for continuity, an amendment which would permit a special exemption for only one case is markedly out of place.

I am told Wards Cove Packing Company based much of its lobbying effort on the fact it has spent large sums in defending the case. But these costs are being largely defrayed by insurers, whose liability for them is a matter of public record.

Third, the provision raises grave constitutional questions. Because it represents an effort by legislators to dictate the outcome of a single case by exempting the case from rules of general application, it violates the separation of powers. Because it singles out the *Wards Cove* plaintiffs for disfavored treatment without any overriding governmental interest, it is vulnerable to an equal protection challenge. And it implicates some of the concerns which underlie the prohibition against bills of attainder.

I would appreciate any efforts you can make to ensure this provision is deleted from the civil rights bill.

Thank you for your attention to this.

Yours very truly,

ABRAHAM A. ARDITI.

OCTOBER 28, 1991.

Senator BROCK ADAMS,
Hart Senate Office Building,
Washington, DC.

Re: Danforth-Kennedy Civil Rights Act of 1991.

DEAR SENATOR ADAMS: I am the Frank Atonio of Wards Cove Packing Co. v. Atonio.

I am writing out of a deep concern about a section in the Civil Rights Act of 1991 which excludes our case from coverage.

It says the Act shall not apply "to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

I am told no other case in the country besides ours meets these criteria, so no other case in the country is excluded from coverage.

I am told this provision was added at the insistence of Senators Murkowski and Stevens, the two Senators from Alaska where Wards Cove Packing Company has its operations. I am also told Wards Cove Packing Company has done a great deal of lobbying in Washington, D.C. to get this provision.

Like other non-whites at Wards Cove Packing Company, I worked in racially segregated jobs, was housed in racially segregated bunkhouses and was fed in racially segregated messhalls. A number of us brought the case to redress the injury caused by racial discrimination. But we now see the original injury compounded by a new injury—one caused by a special exemption obviously designed to make it hard for us to redress the racial discrimination.

The Civil Rights Act of 1991 was drafted in part to overrule the Supreme Court decision in our case. It says,

"The Congress finds that—

"(2) the decision of the Supreme Court in Wards Cove Packing Company v. Atonio, 490 U.S. 624 (1989) has weakened the scope and effectiveness of Federal civil rights protections.

"The purposes of this Act are—

"(2) to codify the concepts of 'business necessity' and 'job relatedness' enunciated by the Supreme Court in Griggs v. Duke Power

---

[1] *Domingo* v. *New England Fish Co.*, 727 F.2d 1429 (9th Cir. 1984), *modified*, 742 F.2d 520 (1984); *Carpenter* v. *Nefco-Fidalgo Packing Co.*, C74-407R (W.D. Wash. May 20, 1982) (order on liability).

Co., 401 U.S. 424 (1971), and the other Supreme Court decisions prior to Wards Cove Packing Company v. Atonio, 490 U.S. 642 (1989).''

I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage. I would appreciate your asking the sponsors (both Republican and Democrat) how they can justify this special exemption.

We have been fighting our case for seventeen and one half years. It was nearing a conclusion when the Supreme Court decided to use it to overturn well established law. We now see new roadblocks raised, which place a just resolution farther in the future.

Few workers in the country are as economically disadvantaged as non-white migrant, seasonal workers, a group which comprises the class in our case. Yet the special exemption in the bill will now make it harder for us than anyone else to prove discrimination against our former employer.

I would appreciate your doing everything in your power to fight this provision.

Yours truly,

FRANK (PETERS) ATONIO.

ORGANIZATION OF
CHINESE AMERICANS, INC.,
Washington, DC, November 5, 1991.

DEAR SENATOR: The Organization of Chinese Americans (OCA), a national civil rights group, strongly urges you to oppose Senator Murkowski's proposed amendment to insert Section 22B into S. 1745, the Civil Rights Act of 1991. Section 22B would unfairly single out and exempt the Wards Cove Packing Company from the entire jurisdiction of the Civil Rights Act of 1991.

To the Chinese American and the Asian Pacific Islander community, overturning the 1989 Supreme Court decision on the Wards Cove Packing Company vs. Atonio case is of the utmost concern. The Ward Cove Packing Company vs. Atonio case directly impacts the Asian Pacific Islander community as the plaintiffs in the case are over 2,000 former and present cannery workers, primarily of Chinese, Filipino, Samoan, and Alaskan Native descent, who have been seeking job discrimination restitution for the past 12 years.

OCA opposes the proposed amendment to S. 1745, to insert Section 22B which results in the contradiction of enacting a civil rights bill which aims to protect the employment rights of all Americans. It is highly ironic that the very Supreme Court case, Wards Cove Packing Company vs. Atonio, that in part gave rise to the Civil Rights Act of 1991, is now being excluded from protection of the legislation. Passage of Section 22B would be an affront to Asian Pacific Islanders and minority workers in denying them equality and fairness accorded to all Americans.

OCA strongly urges you to oppose the insertion of Section 22B into the Civil Rights Act of 1991. Thank you very much for your consideration.

Sincerely,

DAPHNE KWOK,
Executive Director.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MFUME). Pursuant to the rule, the previous question is ordered.

The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the Senate bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HYDE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 381, nays 38, not voting 13, as follows:

[Roll No. 386]

YEAS—381

Ackerman	Durbin	Jones (NC)
Alexander	Dwyer	Jontz
Anderson	Dymally	Kanjorski
Andrews (ME)	Early	Kaptur
Andrews (NJ)	Eckart	Kasich
Andrews (TX)	Edwards (CA)	Kennedy
Annunzio	Edwards (OK)	Kennelly
Applegate	Edwards (TX)	Kildee
Aspin	Emerson	Kleczka
Atkins	Engel	Klug
AuCoin	English	Kolbe
Bacchus	Erdreich	Kolter
Ballenger	Espy	Kopetski
Barnard	Evans	Kostmayer
Barrett	Ewing	Kyl
Barton	Fascell	LaFalce
Beilenson	Fawell	Lagomarsino
Bennett	Fazio	Lancaster
Bentley	Feighan	Lantos
Bereuter	Fish	LaRocco
Berman	Flake	Laughlin
Bevill	Foglietta	Leach
Bilbray	Ford (MI)	Lehman (CA)
Bilirakis	Ford (TN)	Lehman (FL)
Boehlert	Frank (MA)	Lent
Bonior	Franks (CT)	Levin (MI)
Borski	Frost	Lewis (CA)
Boucher	Gallegly	Lewis (FL)
Brewster	Gallo	Lewis (GA)
Brooks	Gaydos	Lightfoot
Broomfield	Gejdenson	Lloyd
Browder	Gekas	Long
Brown	Gephardt	Lowery (CA)
Bruce	Geren	Lowey (NY)
Bryant	Gibbons	Luken
Burton	Gilchrest	Machtley
Bustamante	Gillmor	Manton
Byron	Gilman	Markey
Camp	Gingrich	Martin
Campbell (CA)	Glickman	Martinez
Campbell (CO)	Goodling	Matsui
Cardin	Gordon	Mavroules
Carper	Goss	Mazzoli
Carr	Grandy	McCandless
Chandler	Green	McCloskey
Chapman	Guarini	McCollum
Clay	Gunderson	McCrery
Clement	Hall (OH)	McCurdy
Clinger	Hall (TX)	McDade
Coble	Hamilton	McDermott
Coleman (MO)	Hansen	McGrath
Coleman (TX)	Harris	McHugh
Collins (IL)	Hastert	McMillan (NC)
Collins (MI)	Hatcher	McMillen (MD)
Condit	Hayes (IL)	McNulty
Conyers	Hefner	Meyers
Cooper	Henry	Mfume
Costello	Hertel	Michel
Coughlin	Hoagland	Miller (CA)
Cox (CA)	Hobson	Miller (OH)
Cox (IL)	Hochbrueckner	Miller (WA)
Coyne	Horn	Mineta
Cramer	Horton	Moakley
Cunningham	Houghton	Molinari
Darden	Hoyer	Mollohan
Davis	Hubbard	Montgomery
de la Garza	Huckaby	Moody
DeFazio	Hughes	Moorhead
DeLauro	Hunter	Moran
Dellums	Hutto	Morella
Derrick	Hyde	Morrison
Dicks	Ireland	Mrazek
Dingell	Jacobs	Murphy
Dixon	James	Murtha
Donnelly	Jefferson	Myers
Dooley	Jenkins	Nagle
Dorgan (ND)	Johnson (CT)	Natcher
Dornan (CA)	Johnson (SD)	Neal (MA)
Downey	Johnson (TX)	Neal (NC)
Dreier	Johnston	Nowak
Duncan	Jones (GA)	Nussle
Oakar	Ros-Lehtinen	Sundquist
Obey	Rose	Swett
Olver	Rostenkowski	Swift
Ortiz	Roth	Synar
Orton	Roukema	Tallon
Owens (NY)	Rowland	Tanner
Owens (UT)	Roybal	Tauzin
Packard	Sabo	Taylor (MS)
Pallone	Sanders	Taylor (NC)
Panetta	Santorum	Thomas (CA)
Parker	Sarpalius	Thomas (GA)
Pastor	Savage	Thomas (WY)
Patterson	Sawyer	Thornton
Paxon	Saxton	Torres
Payne (NJ)	Schaefer	Torricelli
Payne (VA)	Scheuer	Towns
Pease	Schiff	Traficant
Pelosi	Schroeder	Traxler
Penny	Schulze	Unsoeld
Perkins	Schumer	Upton
Peterson (FL)	Serrano	Valentine
Peterson (MN)	Sharp	Vento
Petri	Shaw	Visclosky
Pickett	Shays	Volkmer
Pickle	Sikorski	Vucanovich
Porter	Sisisky	Walker
Poshard	Skaggs	Walsh
Price	Skeen	Washington
Pursell	Skelton	Waters
Quillen	Slattery	Waxman
Rahall	Slaughter (NY)	Weber
Ramstad	Smith (IA)	Weldon
Rangel	Smith (NJ)	Wheat
Ravenel	Smith (OR)	Whitten
Ray	Smith (TX)	Williams
Reed	Snowe	Wilson
Regula	Solarz	Wise
Rhodes	Solomon	Wolf
Richardson	Spence	Wolpe
Ridge	Spratt	Wyden
Riggs	Staggers	Wylie
Rinaldo	Stallings	Yates
Ritter	Stark	Yatron
Roe	Stenholm	Young (AK)
Roemer	Stokes	Young (FL)
Rogers	Studds	Zimmer

NAYS—38

Abercrombie	Doolittle	Mink
Allard	Fields	Nichols
Archer	Gonzalez	Oxley
Armey	Hammerschmidt	Roberts
Baker	Hancock	Rohrabacher
Bateman	Hefley	Russo
Bliley	Herger	Sensenbrenner
Boehner	Holloway	Shuster
Callahan	Inhofe	Stearns
Combest	Lipinski	Stump
Crane	Livingston	Vander Jagt
DeLay	Marlenee	Zeliff
Dickinson	McEwen	

NOT VOTING—13

Anthony	Hayes (LA)	Sangmeister
Boxer	Hopkins	Smith (FL)
Bunning	Levine (CA)	Weiss
Dannemeyer	Oberstar	
Gradison	Olin	

□ 1625

Mr. BURTON of Indiana and Mr. SCHAEFER changed their vote from ''nay'' to ''yea.''

So the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1745, the Senate bill just passed.

The SPEAKER pro tempore (Mr. MFUME). Is there objection to the request of the gentleman from Texas?

There was no objection.

PERSONAL EXPLANATION

Mr. FOGLIETTA. Mr. Speaker, I wanted to state for the RECORD the reason for which I voted against the rule for the consideration of the compromise civil rights bill. I fully support the need for a comprehensive civil rights bill. I wish the bill that we adopted as a compromise went further to protect the rights of all persons. I was troubled that this bill treated women as second-class citizens and that women did not have the opportunity to address these issues on the floor. Thus, I opposed the rule.

PERSONAL EXPLANATION

Mr. DANNEMEYER. Mr. Speaker, during rollcall vote numbered 386, I was unavoidably absent from the House floor. Had I been present I would have voted "no" on rollcall No. 386, the quota bill.

PERSONAL EXPLANATION

Mr. ANTHONY. Mr. Speaker, I returned to my district to attend the funeral of a close family friend. Because of my sudden departure, I was unable to vote on S. 1745, the Civil Rights Act. If I had been present, I would have voted for final passage of this bill.

Since the early 1960's, there has been a long precise legislative history of civil rights. S. 1745 holds true to those ideals, and I feel confident this bill will restore and strengthen civil rights laws, but not with the risk of increased employment litigation and quota systems.

LEGISLATIVE PROGRAM

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, I ask for this time for the purposes of ascertaining the schedule for the upcoming week from the distinguished majority whip.

Mr. BONIOR. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Speaker, there will be no more votes this week.

The program for the House of Representatives for the week of November 11, is as follows:

Monday is a holiday, Veterans' Day. The House is not in session.

Tuesday, November 12, the House will meet at noon. We have 10 suspensions. Recorded votes on suspensions will be postponed until after the debate on all suspensions. They are as follows:

H.R. 3049, judicial naturalization amendments of 1991;

H.R. 2626, to eliminate from the District of Columbia Code obsolete reports to Congress;

H.R. 3709, to waive the period of congressional review for certain District of Columbia acts;

H.R. 2270, Senior Executive Service Improvements Act;

H.R. 2109. Revere Beach Study Act of 1991;

H.R. 2859, city of Lynn historical and cultural resources study of 1991;

H.R. 2444, to revise and boundaries of the George Washington Birthplace National Monument;

H.R. 2556, Los Padres Condor Range and River Protection Act;

H.R. 3508, health professions education amendments; and

House Concurrent Resolution 161, sense of Congress that people should observe 100th anniversary of moviemaking.

□ 1630

H.R. 932, Aroostook Bank of MICMACS Indian Settlement Act is an open rule and will be considered after the suspensions.

Votes are anticipated by 1:30 on Tuesday next.

Then on Wednesday, the 13th of November, and Thursday, the 14th of November, the House will meet at 10 a.m. The House will recess immediately and reconvene at 11 a.m. on Thursday to receive His Excellency Carlos Saul Menem, President of the Republic of Argentina, in a joint meeting. Following the joint meeting, the House will reconvene for legislative business.

On those 2 days we will do the following bills;

The unemployment compensation amendments.

H.R. 2094, the FDIC Improvement Act, that is the Banking Act, as amended, if amendment in the Rules Committee.

H.R. 2100, defense authorization for fiscal year 1992 conference report. That is 1 hour of debate.

H.R. 2, Family and Medical Leave Act of 1991, which we do anticipate doing next weeks, subject to a rule as well.

H.R. 2837, Milk Inventory Management Act of 1991. That is the dairy bill, subject to a rule.

H.R. 2929, California Desert Protection Act of 1991, again subject to a rule.

H.R. 3595, Medicaid moratorium amendments of 1991, subject to a rule.

H.R. 2130, National Oceanic and Atmospheric Administration Authorization Act of 1991, subject to a rule.

On Friday, the 15th of November, the House meets at 10 a.m., no legislative business.

Mr. WALKER. It is my understanding, Mr. Speaker, that on Tuesday we would swear in new members. Traditionally when we have done that we have had a Journal vote prior to the swearing in of new Members. Is that something which Members can anticipate on Tuesday?

Mr. BONIOR. I have just been informed, it has not been confirmed that he will be here on Tuesday.

Mr. WALKER. We have two Members who would be sworn in, so it does not appear that would take place on Tuesday, is that what the gentleman is saying?

Mr. BONIOR. I do not know the answer to the gentleman's question, but I would assume that we would want as many Members here as possible.

The tentative schedule is to do the suspensions and then have votes after the suspensions. Maybe we can have discussions on how best to facilitate Members greeting the new Members who arrive here.

I understand the gentleman's concern and I think it is legitimate.

Mr. WALKER. I just think we need to tell Members up front if there is likely to be that vote earlier that was expected because of the Suspension bills.

Mr. BONIOR. The whip call is one option, I have been advised by staff. That is one option for getting people here, but we can further discuss that. I think it is a legitimate concern the gentleman raises.

Mr. WALKER. Well, Mr. Speaker, I thank the gentleman.

We would proceed with votes immediately after the suspensions, rather than waiting until after the Micmacs Indian bill has been disposed with?

Mr. BONIOR. I would think so, yes.

Mr. WALKER. A couple of the bills here that are listed for Wednesday and Thursday of next week I know to be moving targets at the moment. Do we have some of that firmed up?

I know for example I am involved in negotiations on the National Oceanic and Atmospheric Administration. That still appears to be a moving target. Are there others there that are somewhat of a problem in that regard?

Mr. BONIOR. How would the gentleman define moving targets?

Mr. WALKER. Well, we do not have specific language and we are awaiting certain arrangements to be made before we know whether or not we can move the bills to the floor.

Mr. BONIOR. I would say there are others that are in that category.

Mr. WALKER. And the gentleman does not wish to specify, I gather?

Mr. BONIOR. Well, I think everybody has a sense of what we are talking about.

I think the California Desert Protection Act is ready to go.

Mr. WALKER. Mr. Speaker, I thank the gentleman.

VACATING SPECIAL ORDER AND GRANTING SPECIAL ORDER

Mr. OWENS of New York. Mr. Speaker, I ask unanimous consent to vacate the special order that I requested for Tuesday, November 19, 1991, and that the gentleman from Indiana [Mr. ROEMER] be recognized for a special order in my place.

The SPEAKER pro tempore (Mr. MFUME). Is there objection to the request of the gentleman from New York?

There was no objection.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, FISCAL YEAR 1992

Mr. BROWN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1988) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control, and data communications, construction of facilities, research and program management, and inspector general, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendment, as follows:

House amendment to the Senate amendment: In lieu of the matter proposed to be inserted by the Senate, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992".

SEC. 2. FINDINGS.

Congress finds that—

(1) the report of the Advisory Committee on the Future of the United States Space Program has provided a framework within which a consensus on the goals of the space program can be developed;

(2) a balanced civil space science program should be funded at a level of at least 20 percent of the aggregate amount in the budget of the National Aeronautics and Space Administration for "Research and development" and "Space flight, control, and data communications";

(3) development of an adequate data base for life sciences in space will be greatly enhanced through closer scientific cooperation with the Soviet Union, including active use of manned Soviet space stations;

(4) the space program can make substantial contributions to health-related research and should be an integral part of the Nation's health research and development program;

(5) Landsat data and the continuation of the Landsat system beyond Landsat 6 are essential to the Mission to Planet Earth and other long-term environmental research programs;

(6) increased use of defense-related remote sensing data and data technology by civilian agencies and the scientific community can benefit national environmental study and monitoring programs;

(7) the generation of trained scientists and engineers through educational initiatives and academic research programs outside of the National Aeronautics and Space Administration is essential to the future of the United States civil space program;

(8) the strengthening and expansion of the Nation's space transportation infrastructure, including the enhancement of launch sites and launch site support facilities, are essential to support the full range of the Nation's space-related activities;

(9) the aeronautical program contributes to the Nation's technological competitive advantage, and it has been a key factor in maintaining preeminence in aviation over many decades; and

(10) the National Aero Space Plane program can have benefits to the military and civilian aviation programs from the new and innovative technologies developed in propulsion systems, aerodynamics, and control systems that could be enormous, especially for high-speed aeronautical and space flight.

SEC. 3. POLICY.

It is the policy of the United States that—

(1) the Administrator of the National Aeronautics and Space Administration (hereinafter referred to as the "Administrator"), in planning for national programs in environmental study and human space flight and exploration, should ensure the resiliency of the space infrastructure;

(2) a stable and balanced program of civil space science should be planned to minimize future year funding requirements in order to accommodate a steady stream of new initiatives;

(3) any new launch system undertaken or jointly undertaken by the National Aeronautics and Space Administration should be based on defined mission and program requirements or national policies established by Congress;

(4) in fulfilling the mission of the National Aeronautics and Space Administration to improve the usefulness, performance, speed, safety, and efficiency of space vehicles, the Administrator should establish a program of research and development to enhance the competitiveness and cost effectiveness of commercial expendable launch vehicles; and

(5) the National Aeronautics and Space Administration should promote and support efforts to advance scientific understanding by conducting or otherwise providing for research on environmental problems, including global change, ozone depletion, acid precipitation, deforestation, and smog.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR NASA.

(a) RESEARCH AND DEVELOPMENT.—There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1991, for "Research and development", for the following programs:

(1) United States International Space Station Freedom, $2,028,900,000 for fiscal year 1992, of which $18,000,000 is authorized for the design and development of an Assured Crew Return Vehicle.

(2) Space transportation capability development, $679,800,000, of which $40,000,000 is authorized for the propulsion technology development, and $10,000,000 is authorized for launch vehicle design studies, including single-stage-to-orbit vehicles.

(3) Physics and astronomy, $1,104,600,000, of which $3,000,000 is authorized for carrying out scientific programs which have otherwise been eliminated from the Space Station.

(4) Life sciences, $163,900,000.

(5) Planetary exploration, $299,300,000.

(6) Earth science and applications, $756,600,000, of which—

(A) $5,000,000 is authorized for the purchase of Landsat data at cost for global change research;

(B) $5,000,000 is authorized for the purchase of long-lead parts for a follow-on to Landsat 6;

(C) $1,000,000 is authorized for remote sensing data conversion;

(D) $3,000,000 is authorized for a pilot study and prototype demonstration to convert remotely-sensed aircraft and satellite data into machine readable form for global change research; and

(E) $2,000,000 is authorized for converting Landsat data collected prior to the date of enactment of this Act into a more durable archive medium.

(7) Materials Processing in space, $120,800,000.

(8) Communications, $39,400,000.

(9) Information systems, $42,000,000.

(10) Technology utilization, $32,000,000.

(11) Commercial use of space, $107,000,000.

(12) Aeronautical research and technology, $591,200,000.

(13) Transatmospheric research and technology, $72,000,000.

(14) Space research and technology, $324,800,000, of which $10,000,000 is authorized for a solar dynamics power research and technology development program, including a ground test of the technology, and $10,000,000 for a program of component technology development, validation, and demonstration directed at commercial launch competitiveness.

(15) Exploration activities, $34,500,000.

(16) Safety, reliability, and quality assurance, $33,600,000.

(17) Tracking and data advanced systems, $22,000,000.,

(18) Academic programs, $64,600,000.

(b) SPACE FLIGHT, CONTROL, AND DATA COMMUNICATIONS.—There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1991, for "Space flight, control, and data communication", for the following programs:

(1) Space shuttle production and operational capability, $1,328,900,000, of which $375,000,000 is authorized for the Advanced Solid Rocket Motor program.

(2) Space shuttle operations, $2,970,600,000.

(3) Launch services, $291,900,000, amounts of which may be expended for the mobile Satellite launch if—

(A) the Administrator, in consultation with the Chairman of the Federal Communications Commission, determines that uncertainties with respect to the status of the American Mobile Satellite Corporation as the sole Federal Communications Commission license holder for mobile satellite servics have been resolved; and

(B) at least 30 days prior to the obligation of any funds for the Mobile Satellite launch, the Administrator submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report detailing plans for reimbursement to the National Aeronautics and Space Administration for its portion of launch costs of the Mobile Satellite.

(4) Space and ground network, communications, and data systems, $920,900,000.

(c) CONSTRUCTION OF FACILITIES.—There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1991, for "Construction of facilities", including land acquisition, as follows:

(1) Construction of Space Station Processing Facility, Kennedy Space Center, $35,000,000.

(2) Modification for Earthquake Protection, Downey/Palmdale, California, Johnson Space Center, $4,400,000.

(3) Modifications for Safe Haven, Vehicle Assembly Building, High-Bay 2, Kennedy Space Center, $7,500,000.

(4) Rehabilitation of Crawlerway, Kennedy Space Center, $3,000,000.

(5) Restoration of Shuttle Landing Facility Shoulders, Kennedy Space Center, $4,000,000.

(6) Restoration of the High Pressure Gas Facility, Stennis Space Center, $6,500,000.

(7) Construction of Addition for Flight Training and Operations, Johnson Space Center, $13,000,000.

(8) Construction of Advanced Solid Rocket Motor Program Facilities (various locations), $100,000,000.

(9) Modernization of Industrial Area Chilled Water System, Kennedy Space Center, $4,000,000.

(10) Rehabilitation and Expansion of Communications Duct Banks, Kennedy Space Center, $1,400,000.

(11) Replacement of 15 KV Load Break Switches, Kennedy Space Center, $1,300,000.

(12) Repair of Site Water System, White Sands Test Facility, $1,300,000.

(13) Replacement of Central Plant Chillers and Boiler, Johnson Space Center, $5,700,000.

(14) Modification to X-Ray Calibration Facility (XRCF), Marshall Space Flight Center, $5,200,000.

(15) Restoration and Modernization of High Voltage Distribution System, Goddard Space Flight Center, 7,000,000.

(16) Construction of Earth Observing System Data Information System Facility, Goddard Space Flight Center, $17,000,000.

(17) Modernization of Main Electrical Substation, Jet Propulsion Laboratory, $5,500,000.

(18) Restoration of Utilities, Wallops Flight Facility, $3,500,000

(19) Repair and Modernization of the 12-foot Pressure Wind Tunnel, Ames Research Center, $25,000,000.

(20) Upgrade of Outdoor Aerodynamic Research Facility, Ames Research Center, $3,300,000.

(21) Modernization of 16-foot Transonic Tunnel, Langley Research Center, $3,400,000

(22) Modifications to the High Pressure Air System, Langley Research Center, $11,700,000.

(23) Rehabilitation of Central Air System, Lewis Research Center, $5,600,000.

(24) Rehabilitation of Icing Research Tunnel, Lewis Research Center, $2,600,000.

(25) Construction of Data Interface Facility, White Sands Test Facility, $4,000,000.

(26) Rehabilitation of Tracking and Data Relay Satellite System (TDRSS) Ground Terminal, White Sands Test Facility, $5,700,000.

(27) Repair of facilities at various locations, not in excess of $1,000,000 per project, $31,700,000.

(28) Rehabilitation and modification of facilities at various locations, not in excess of $1,000,000 per project, $34,800,000.

(29) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of $750,000 per project, $12,900,000.

(30) Environmental compliance and restoration, $36,000,000.

(31) Facility planning and design, not otherwise provided for, $34,000,000.

Notwithstanding the amounts authorized in paragraphs (1) through (31), the total amount authorized by this subsection shall not exceed $430,300,000.

(d) RESEARCH AND PROGRAM MANAGEMENT.—There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1991, for "Research and program management", $2,422,300,000.

(e) INSPECTOR GENERAL.—There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1991, for "Inspector General", $14,600,000.

(f) USE OF FUNDS FOR CERTAIN CAPITAL ITEMS AND GRANTS.—(1) Notwithstanding the provisions of subsection (i), appropriations authorized in this Act for "Research and development" and "Space flight, control, and data communications" may be used—

(A) for any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the National Aeronautics and Space Administration for the performance of research and development contracts; and

(B) for grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities.

(2) Title to facilities described in paragraph (1)(B) shall be vested in the United States unless the Administrator determines that the national program of aeronautical and space activities will best be served by vesting title in the grantee institution or organization. Each grant under paragraph (1)(B) shall be made under such conditions as the Administrator shall determine to be required to ensure that the United States will receive therefrom benefit adequate to justify the making of that grant.

(3) None of the funds appropriated for "Research and development" and "Space flight, control, and data communications" pursuant to this Act may be used in accordance with this subsection for the construction of any facility, the estimated cost of which, including collateral equipment, exceeds $750,000, unless the Administrator has notified the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives of the nature, location, and estimated cost of such facility.

(g) AVAILABILITY OF APPROPRIATED AMOUNTS.—Appropriations authorized under this section for "Research and development", for "Space flight, control, and data communications", or for "Construction of facilities" may remain available until expended. Appropriations authorized under this section for "Research and program management" for maintenance and operation of facilities and for other services shall remain available through the next fiscal year following the fiscal year for which such amount is appropriated.

(h) USE OF FUNDS FOR SCIENTIFIC CONSULTATIONS AND EXTRAORDINARY EXPENSES.—Appropriations made pursuant to subsection (d) may be used, but not to exceed $35,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator, and the Administrator's determination shall be final and conclusive upon the accounting officers of the Government.

(i) USE OF FUNDS FOR FACILITIES.—(1) Except as provided in subsection (f), funds appropriated pursuant to subsections (a), (b), and (d) may be used for the construction of new facilities and additions to, repair of, rehabilitation of, or modification of existing facilities, but only if the cost of each such project, including collateral equipment, does not exceed $200,000.

(2) Except as provided in subsection (f), funds appropriated pursuant to subsections (a) and (b) may be used for unforeseen programmatic facility project needs, but only if the cost of each such project, including collateral equipment, does not exceed $750,000.

(3) Funds appropriated pursuant to subsection (d) may be used for repair, rehabilitation, or modification of facilities controlled by the General Services Administration, but only if the cost of each project, including collateral equipment, does not exceed $500,000.

(j) CRAF/CASSINI MISSION.—Section 103(a)(1)(S) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 (Public Law 101-611; 104 Stat. 3192), is amended—

(1) by striking "$1,600,000,000" and inserting in lieu thereof "$1,900,000,000";

(2) in clause (i), by striking the semicolon at the end and inserting in lieu thereof ", of which not more than $263,000,000 shall be available for fiscal year 1992; and

(3) in clause (iii), by striking "$640,000,000" and inserting in lieu thereof "$940,000,000".

(k) TOTAL AUTHORIZATIONS FOR FISCAL YEARS 1993 AND 1994.—There is authorized to be appropriated to the National Aeronautics and Space Administration for "Research and development", "Space flight, control, and data communications", "Construction of facilities", "Research and program management", and "Inspector General" a total amount of $15,601,000,000 for fiscal year 1993, and $16,959,000,000, for fiscal year 1994, to remain available until expended.

(l) REPROGRAMMING FOR TRANSATMOSPHERIC RESEARCH AND TECHNOLOGY.—The Administrator may reprogram up to $67,000,000 of the amount authorized for "Research and development" for fiscal year 1992 to use for the purposes described in subsection (a)(3). No such funds may be obligated until a period of 30 days has passed after the Administrator has notified the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Sciences, Space, and Technology of the House of Representatives of such transfer.

SEC. 5. CONSTRUCTION OF FACILITIES REPROGRAMMING.

Appropriations authorized under section 4(c)(1) through (31)—

(1) in the discretion of the Administrator or the Administrator's designee, may be varied upward by 10 percent; or

(2) following a report by the Administrator or the Administrator's designee to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives on the circumstances of such action, may be varied upward by 25 percent, to meet unusual cost variations.

The total amount authorized to be appropriated under section 4(c)(1) through (31) shall not be increased as a result of actions authorized under paragraphs (1) and (2).

SEC. 6. SPECIAL REPROGRAMMING AUTHORITY FOR CONSTRUCTION OF FACILITIES.

Where the Administrator determines that new developments or scientific or engineering changes in the national program of aeronautical and space activities have occurred; and that such changes require the use of additional funds for the purposes of construction, expansion, or modification of facilities at any location; and that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities; the Administrator may transfer not to exceed one-half of 1 percent of the funds appropriated pursuant to section 4(a) and (b) to the "Construction of facilities" appropriation for such purposes the Administrator may also use up to $10,000,000 of the amounts authorized under section 4(c) for such purposes. The funds so made available pursuant to this section may be expended to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment. No such funds may be obligated until a period of 30 days has passed after the Administrator or the Administrator's designee has transmitted to the Committee on Commerce, Science, and Transportation of

the Senate and the Committee on Science, Space, and Technology of the House of Representatives a written report describing the nature of the construction, its cost, and the reasons therefor.

SEC. 7. CONSIDERATION BY COMMITTEES.

Notwithstanding any other provision of this Act—

(1) no amount appropriated pursuant to this Act may be used for any program deleted by Congress from requests as originally made to either the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Science, Space, and Technology of the House of Representatives;

(2) no amount appropriated pursuant to this Act may be used for any program in excess of the amount actually authorized for that particular program by section 4(a), (b), and (d); and

(3) no amount appropriated pursuant to this Act may be used for any program which has not been presented to either such committee,

unless a period of 30 days has passed after the receipt, by each such committee, of notice given by the Administrator or the Administrator's designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action. The National Aeronautics and Space Administration shall keep the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with respect to all activities and responsibilities within the jurisdiction of those committees. Any Federal department, agency, or independent establishment shall furnish any information requested by either committee relating to any such activity or responsibility.

SEC. 8. FACILITY MAINTENANCE OFFICE.

The Administrator shall create a Facility Maintenance Office within the Office of Management Systems and Facilities which shall plan and direct facilities maintenance management for all National Aeronautics and Space Administration sites.

SEC. 9. GEOGRAPHICAL DISTRIBUTION.

It is the sense of Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.

SEC. 10. PEACEFUL USES OF SPACE STATION.

No civil space station authorized under section 4(a)(1) of this Act may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.

SEC. 11. TRANSMISSION OF BUDGET ESTIMATES.

The Administrator shall, at the time of submission of the President's annual budget, transmit to Congress—

(1) a 5-year budget detailing the estimated development costs for each individual program under the jurisdiction of the National Aeronautics and Space Administration for which development costs are expected to exceed $200,000,000; and

(2) an estimate of the life-cycle costs associated with each such program.

SEC. 12. NATIONAL SCHOLARS PROGRAM FEASIBILITY STUDY.

(A) STUDY.—The Administrator shall conduct a study to evaluate the feasibility of initiating a National Scholars Program, as described under subsection (b), under which a select group of students would receive Federal support for education in mathematics, science, and related disciplines. The purpose of the National Scholars Program would be to help increase the number of Ph.D. recipients in mathematics, science, and related disciplines among the Nation's economically disadvantaged.

(b) DESCRIPTION OF NATIONAL SCHOLARS PROGRAM.—Under the National Scholars Program referred to in subsection (a), the Administrator would—

(1) select economically disadvantaged high school students for participation in science programs supported by the National Aeronautics and Space Administration or other institutions where they would receive specialized instruction in mathematics and science and would learn about practical applications of mathematics and science in the programs and activities of the National Aeronautics and Space Administration; and

(2) select economically disadvantaged undergraduate and graduate students as recipients of Federal financial support for predoctoral and doctoral studies in mathematics, science, and related disciplines.

(c) CONTENTS OF STUDY.—The study required by subsection (a) shall address, among other matters—

(1) whether the National Aeronautics and Space Administration could adequately implement the National Scholars Program;

(2) different options for structuring the National Scholars Program, including its establishment as a pilot program;

(3) the cost of the Program, with annual cost estimates for the first 10 years of the Program;

(4) alternative funding sources for the Program;

(5) the criteria for selecting students for participation in the Program;

(6) the appropriate number of students for annual participation in the Program;

(7) the organizational location within the National Aeronautics and Space Administration at which the Program and its activities would be administered;

(8) the management of the Program;

(9) the possible ways in which the Program or its concepts can be extended to other Federal agencies, State agencies, educational institutions, and private organizations;

(10) the existence of any current public or private sector programs which are similar to the Program, the benefits and disadvantages of those similar programs, and whether a new program would unnecessarily duplicate current efforts; and

(11) the extent to which existing Federal, State, and other science education programs and activities could be used to complement or supplement the Program.

(d) REPORT.—Within 6 months after the date of enactment of this Act, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House or Representatives a report on the results of the study required by subsection (a).

SEC. 13. COMMERCIAL SPACE LAUNCH ACT AUTHORIZATION.

Section 24 of the Commercial Space Launch Act (49 App. U.S.C. 2623) is amended to read as follows:

"AUTHORIZED APPROPRIATIONS

"SEC. 24. There is authorized to be appropriated to the Secretary for fiscal year 1992—

"(1) $5,104,000 to carry out this Act; and

"(2) $20,000,000 for a program to ensure the resiliency of the Nation's space launch infrastructure, only if a statute is enacted into law to establish that program within the Department of Transportation.".

SEC. 14. NATIONAL SPACE COUNCIL AUTHORIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2471), $1,491,000 for fiscal year 1992, of which not more than $1,000 shall be available for official reception and representation expenses. The National Space Council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

(b) LANDSAT DATA CONTINUITY.—It is the sense of Congress that the National Space Council, in coordination with the Committee on Earth and Environmental Sciences, should establish policy recommendations for carrying out the President's commitment to maintaining the continuity of Landsat data, including plans and programs for a successor to Landsat 6, organizational options and recommendations for acquiring Landsat data for global change research, national security, environmental management, and other governmental purposes, and options and recommendations for encouraging the use of Landsat data by commercial firms and development of the commercial market for such data. Such policy recommendations shall be transmitted in writing to Congress at the time of submission of the President's fiscal year 1993 budget.

SEC. 15. OFFICE OF SPACE COMMERCE AUTHORIZATION.

There are authorized to be appropriated to the Secretary of Commerce for the Office of Space Commerce $491,000 for fiscal year 1992.

SEC. 16. AMENDMENT OF PUBLIC LAW 100-147.

Section 107(a) of the National Aeronautics and Space Administration Authorization Act of 1988 (Public Law 100-147; 101 Stat. 864) is amended—

(1) by inserting ", in both then year and constant dollars," immediately after "estimated cost";

(2) by inserting "assembly (including related costs);" immediately after "construction of facilities;"; and

(3) by adding at the end the following new sentence: "Each such plan shall also include the estimated cost, in both then year and constant dollars, of operations for at least the first full year of steady operations of the space station.".

SEC. 17. MULTIYEAR CONTRACTING.

Along with submission to Congress of the National Aeronautics and Space Administration fiscal year 1993 budget request, the Administrator shall—

(1) present a study which assesses the usefulness of granting similar authority as under section 2306(h) of title 10, United States Code, to the National Aeronautics and Space Administration; and

(2) recommend no less than five candidate programs to be considered by Congress for multiyear contracting.

SEC. 18. USE OF DOMESTIC PRODUCTS.

(a) PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—(1) A person shall not intentionally affix a label bearing the inscription "Made in America", or any inscription with that meaning, to any product sold in or shipped to the United States, if that product is not a domestic product.

(2) A person who violates paragraph (1) shall not be eligible for any contract for a

procurement carried out with amounts authorized under this Act, including any subcontract under such a contract.

(b) COMPLIANCE WITH BUY AMERICAN ACT.—(1) Except as provided in paragraph (2), the head of each agency which conducts procurements shall ensure that such procurements are conducted in compliance with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a through 10c, popularly known as the "Buy American Act").

(2) This subsection shall apply only to procurements made for which—

(A) amounts are authorized by this Act to be made available; and

(B) solicitations for bids are issued after the date of enactment of this Act.

(3) The Administrator, before January 1, 1994, shall report to the Congress on procurements covered under this subsection of products that are not domestic products.

(c) DEFINITIONS.—For the purposes of this section, the term "domestic product" means a product—

(1) that is manufactured or produced in the United States; and

(2) at least 50 percent of the cost of the articles, materials, or supplies of which are mined, produced, or manufactured in the United States.

SEC. 19. QUALITY ASSURANCE PERSONNEL.

(a) EXCLUSION OF NASA PERSONNEL.—A person providing articles to the National Aeronautics and Space Administration under a contract entered into after the date of enactment of this Act may not exclude National Aeronautics and Space Administration quality assurance personnel from work sites except as provided in a contract provision described in subsection (b).

(b) CONTRACT PROVISIONS.—The National Aeronautics and Space Administration shall not enter into any contract which permits the exclusion of National Aeronautics and Space Administration quality assurance personnel from work sites unless the Administrator has submitted a copy of the provision permitting such exclusion to the Congress at least 60 days before entering into such contract.

SEC. 20. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ENDEAVOR TEACHER FELLOWSHIP TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States, in tribute to the dedicated crew of the Space Shuttle Challenger, a trust fund to be known as the "National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund" (hereafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of gifts and donations accepted by the National Aeronautics and Space Administration pursuant to section 208 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2476b), as well as other amounts which may from time to time, at the discretion of the Administrator, be transferred from the National Aeronautics and Space Administration Gifts and Donations Trust Fund.

(b) INVESTMENT OF TRUST FUND.—The Administrator shall direct the Secretary of the Treasury to invest and reinvest funds in the Trust Fund in public debt securities with maturities suitable for the needs of the Trust Fund, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Interest earned shall be credited to the Trust Fund.

(c) PURPOSE.—Income accruing from the Trust Fund principal shall be used to create the National Aeronautics and Space Administration Endeavor Teacher Fellowship Program, to the extent provided in advance in appropriation Acts. The Administrator is authorized to use such funds to award fellowships to selected United States nationals who are undergraduate students pursuing a course of study leading to certified teaching degrees in elementary education or in secondary education in mathematics, science, or technology disciplines. Awards shall be made pursuant to standards established for the fellowship program by the Administrator.

SEC. 21. DRUG AND ALCOHOL TESTING.

(a) SHORT TITLE.—This section may be cited as the "Civil Space Employee Testing Act of 1991".

(b) FINDINGS.—The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) the success of the United States civil space program is contingent upon the safe and successful development and deployment of the many varied components of that program;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the positions affecting safety, security, and national security;

(4) the use of alcohol and illegal drugs has been demonstrated to adversely affect the performance of individuals, and has been proven to have been a critical factor in accidents in the workplace;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(c) TESTING PROGRAM.—(1) The Administrator shall establish a program applicable to employees of the National Aeronautics and Space Administration whose duties include responsibility for safety-sensitive, security, or national security functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, security, and national security, for the conduct of periodic recurring testing of such employees for such use in violation of applicable law or Federal regulation.

(2) The Administrator shall, in the interest of safety, security, and national security, prescribe regulations within 18 months after the date of enactment of this Act. Such regulations shall establish a program which requires National Aeronautics and Space Administration contractors to conduct preemployment, reasonable suspicion, random, and post-accident testing of contractor employees responsible for safety-sensitive, security, or national security functions (as determined by the Administrator) for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, security, and national security, for the conduct of periodic recurring testing of such employees for such use in violation of applicable law or Federal regulation.

(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension, disqualification, or dismissal of any employee to which paragraph (1) or (2) applies, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(d) PROHIBITION ON SERVICE.—(1) No individual who is determined by the Administrator under this section to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after the date of enactment of this Act shall serve as a National Aeronautics and Space Administration employee with responsibility for safety-sensitive, security, or national security functions (as determined by the Administrator), or as a National Aeronautics and Space Administration contractor employee with such responsibility, unless such individual has completed a program of rehabilitation described in subsection (e).

(2) Any such individual determined by the Administrator under this section to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after the date of enactment of this Act who—

(A) engaged in such use while on duty;

(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (e);

(C) following such determination refuses to undertake such a rehabilitation program; or

(D) following such determination fails to complete such a rehabilitation program,

shall not be permitted to perform the duties which such individual performed prior to the date of such determination.

(e) PROGRAM FOR REHABILITATION.—(1) The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (c) in need of assistance in resolving problems with the use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. Each contractor is encouraged to make such a program available to all of its employees in addition to those employees referred to in subsection (c)(2). The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any National Aeronautics and Space Administration contractor from establishing a program under this subsection in cooperation with any other such contractor.

(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the National Aeronautics and Space Administration whose duties include responsibility for safety-sensitive, security, or national security functions who are in

need of assistance in resolving problems with the use of alcohol or controlled substances.

(f) PROCEDURES FOR TESTING.—In establishing the programs required under subsection (c), the Administrator shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the initial confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information of employees; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(g) EFFECT ON OTHER LAWS AND REGULATIONS.—(1) No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section.

(2) Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before the date of enactment of this act that govern the use of alcohol and controlled substances by National Aeronautics and Space Administration employees with responsibility for safety-sensitive, security, and national security functions (as determined by the Administrator), or by National Aeronautics and Space Administration contractor employees with such responsibility.

(h) DEFINITION.—For the purposes of this section, the term "controlled substance" means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Administrator.

Mr. BROWN (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Massachusetts?

Mr. WALKER. Reserving the right to object, Mr. Speaker, I will not object, but I do so for the purpose of allowing some discussion of the bill before us.

Mr. Speaker, I yield first under my reservation to the distinguished gentleman from California [Mr. BROWN], the chairman of the Committee on Science, Space, and Technology.

Mr. BROWN. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I wonder if the gentleman will be kind enough to yield to the gentleman from North Carolina [Mr. VALENTINE].

Mr. WALKER. Mr. Speaker, I am happy to yield to the gentleman from North Carolina [Mr. VALENTINE].

Mr. VALENTINE. Mr. Speaker, I rise in strong support of the NASA Multi-Year Authorization Act of 1991, H.R. 1988, as amended. I commend the chairman for reaching a remarkably evenhanded balance of the realities of our budget problems and the essentials of sustaining our competitive posture in aerospace. I want to thank my colleague, Mr. TOM LEWIS of Florida the ranking Republican member of the Subcommittee on Technology and Competitiveness for his help.

The aerospace industry is a jewel in our industrial crown. We must ensure the vitality of that industry now and in the future. Our Nation needs many things of an immediate nature, but we cannot forsake the future when we establish budget priorities.

Aeronautical research and technology has long been recognized for its contribution to the economy. H.R. 1988, as amended continues that contribution. This year's authorization will prove a bargain investment in years to come.

One component of H.R. 1988, as amended, the national aerospace plane, will contribute to the future of both military and civil aerospace endeavors. We have already realized profitable technology returns from our investment to date in the NASP/X–30 program. We expect much greater returns as its development continues. NASP will lead to breakthroughs in materials and engine technologies that will help bring jobs and prosperity to aerospace for years to come. The $72 million authorized for the national aerospace plane will help meet that promise.

H.R. 1988, as amended, requires NASA to improve the care and maintenance of the public investment in their vast array of facilities that are crumbling from neglect. This legislation also provides for the continued upgrade and increased efficiency of NASA's laboratories.

H.R. 1988, as amended, is a good bill. I urge my colleagues to support it.

Mr. WALKER. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from California.

Mr. BROWN. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, it gives me an opportunity also to compliment the gentleman on his contribution to this legislation as the ranking minority member of the Committee on Science, Space, and Technology.

Mr. Speaker, I do not intend to take up much time today. However, I want to commend all the members of the Science Committee who worked on this bill and our colleagues from the other body for their fine level of cooperation.

I have a statement that I will include in the RECORD that explains the bill in detail. It is a good bill, a reasonable compromise with the other body, and we anticipate that with the action we are taking they will act expeditiously and send the bill on to the President.

Mr. WALKER. Further reserving the right to object, Mr. Speaker, I would concur in the gentleman's remarks. We made just a couple comments which could have been more timely, but this does have a number of important initiatives in it. It does fully fund space station *Freedom* and assures the necessary resources for the national aerospace plane.

We have taken some important steps toward multiyear funding in the bill. It is something that we have long advocated on the House side and I am glad to see we are moving in that direction.

Also this legislation contains language drafted by the gentleman from Wisconsin [Mr. SENSENBRENNER], the ranking Republican on the Subcommittee on Space, that calls on NASA to recommend specific programs that benefit from the steady spending stream afforded by complete project authorization.

In my view, this provision will enable us to pursue multiyear funding in next year's authorization.

Both Chairman BROWN and Chairman HALL have been very diligent in their work on this bill. I certainly congratulate them for where we are here this evening and join with the gentleman from California in hopes that the Senate will move expeditiously and get this to the President, where I am sure it will be signed.

Mr. GLICKMAN. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I thank my colleague for yielding to me.

I would point out that this bill has a very constructive feature which the gentleman just mentioned, and that is the reprogramming capability for the Administrator of NASA to transfer up to $67 million into the national aerospace plane project, the transatmospheric research and technology.

Unfortunately, in the appropriations bill that was passed a few weeks back, that project was almost zeroed out, barely funded. This is a project of immense importance to the United States of America, producing an aircraft for both military, but particularly for commercial purposes that can fly at hypersonic speeds and transport people from the United States to anywhere in the world in a very short period of time. If we do not do it in America, somebody else will, particularly the Japanese and the Germans.

What we have done in this bill is to give the Administrator authority to transfer up to what we thought he needed. Now I hope he would use that authority, and it is my hope that by this discussion today he will know this is of great importance to members of the Committee on Science, Space, and Technology.

□ 1630

Mr. WALKER. Mr. Speaker, further reserving the right to object, I certainly agree with the gentleman on that. He can count on the fact that I will be very strongly urging the Administrator to prioritize this funding and transfer whatever funds are necessary within this authorization to see to it the national aerospace plane moves forward.

It is clear to me that this is one of the ultimate technologies of the future, and this country needs to be in the forefront of it, and we would make a terrible mistake if the civilian space agency does not aggressively move forward building a national aerospace plane.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Florida [Mr. LEWIS], my colleague who is one of the ranking Republican members of the subcommittee of jurisdiction.

Mr. LEWIS of Florida. Mr. Speaker, I thank the gentleman for yielding to me, and I rise in strong support of the NASA Multiyear Authorization Act of 1991, H.R. 1988, as amended. The aeronautics portions of this bill received strong bipartisan support in both the Science Committee and in the House.

I want to thank subcommittee Chairman VALENTINE for his hard work in forging the bipartisan legislation on the aeronautics portion of H.R. 1988, as amended. I also want to thank Chairman BROWN and ranking member WALKER for their leadership and support in forging this agreement before us with the other body.

The NASA aeronautics research section has one of the world's best high-performance computing programs underway and a preeminent long-term aviation safety program. Many of the advances in aviation technology, such as nondestructive testing of aging aircraft, are the result of NASA's research.

It is widely known that the largest positive balance of trade in any U.S. business sector is in aeronautics. In 1990, for example, the positive balance of trade is estimated to have been $25 billion. Credit of the aeronautical technology advantage is due, to a large part, to the long-term, high-risk research program at NASA.

Another important program is the national aerospace plane [NASP]. The project, conducted jointly with the Air Force has made major advances in management with the innovative teaming of contractors, materials in new heat resistant carbon-carbon, propulsion with advanced computers and wind tunnel tests and on and on.

NASP-type research programs will insure U.S. technology leadership into the next century.

The bill as amended, contains a provision mandating an Office of Management Systems. Subcommittee Chairman VALENTINE and I introduced it at the subcommittee markup. This afternoon Admiral Truly called me to inform me that NASA had recently reorganized and has created a position that would fulfill the duties mandated in this bill.

Also, Admiral Truly assured me that they would carry out the intent of the legislation.

I urge my colleagues to support H.R. 1988 as amended.

Mr. WALKER. Further reserving the right to object, I yield to the gentleman from Texas [Mr. HALL], the distinguished chairman of the Subcommittee on Space of the Committee on Science, Space, and Technology, who has worked so hard on this bill and has produced a very, very good document.

Mr. HALL of Texas. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I am grateful to the chairman of the committee, the gentleman from California [Mr. BROWN], and the ranking member, the gentleman from Pennsylvania [Mr. WALKER], and to all those who have worked with us to bring this to a successful conclusion.

Mr. Speaker, it is with great pleasure that I rise in support of H.R. 1988, the NASA Authorization Act of fiscal year 1992.

While I have long been interested in the health of the Nation's civil space program, this is the first year I have had the honor and privilege of serving as chairman of the Subcommittee on Space. It has been a year marked by renewed examination of our Nation's goals in space, as well as by debate over the best ways to achieve those goals. The report of the advisory committee on the future of the U.S. Space Program, commonly known as the Augustine committee report, which came out at the end of 1990, has provided a useful framework for the debate and includes recommendations that I believe can strengthen the space program. I believe that H.R. 1988 is faithful to the spirit of the Augustine report and will help advance the goals it identified.

Of course, all of us in this body recognize that we are living in a terribly constrained fiscal environment. H.R. 1988 reflects that environment. While the Space Subcommittee would like to support an aggressive space program, we recognize that tough choices have to be made. Thus, H.R. 1988 cuts the President's request by almost $600 million while maintaining an appropriate balance between a number of worthwhile programs.

Although cuts have had to be made, I believe that this bill does keep in place important initiatives that are central to NASA's mission. Thus the international space station Freedom, which was restructured this year at the direction of Congress, is strongly supported in this legislation. I believe that the station, once it is completed, will be an essential facility for learning how to live and work in space, and in preparing for eventual exploration of the solar system. Perhaps equally important will be the research conducted on the space station. While we cannot predict in advance the fruits of scientific research, I am confident that we will make discoveries in the life sciences and in the materials sciences that will be of great benefit to those of us here on Earth.

Another area of space research that could pay impressive terrestrial dividends is space robotics and automation, and this legislation encourages NASA's efforts in this area. I regret that funding for the flight telerobotic servicer program had to be cut, and I certainly encourage NASA to ensure that the significant investment of over $200 million made by the U.S. Government in FTS over the last 5 years is not in vain. I believe that NASA should explore ways in which hardware and software advances from the FTS program can be incorporated into future telerobotics designs.

Space science and applications is a fundamental part of NASA's mission, and this bill provides an increase of almost 15 percent over the fiscal year 1991 budget. We intend to maintain vigorous support of the science and applications program, but we have also urged NASA to structure its program

in a way that is sustainable in future years. In that regard, I am encouraged by the recent restructuring of the Earth observing system recommended by the Frieman committee and the new emphasis on smaller science missions called for in the recommendations of NASA's space science and applications advisory committee. I think that such an approach is needed if we are to make the most effective use of the universities' research capabilities—one of this Nation's strongest assets.

There are many other important features contained in this legislation, but I would like to just comment on a provision contained in the life sciences funding that I think will have important long-term consequences. Specifically, we have allocated $2 million to plan and conduct cooperative research on the Soviet space station Mir. While I believe that the American space program is second to none in the world, I think it is important for us to gain as much knowledge as possible from the Soviet program as we move forward with our own space station. Now that the cold war is over, there is much our two nations can do together in space. The funding contained in this bill is an important step toward that goal.

Mr. Speaker, I think that H.R. 1988 is an excellent bill. Its final form is the result of productive discussions and reasonable compromises with our colleagues in the Senate. I congratulate the full committee chairman, Mr. BROWN, the ranking Republican member on the committee, Mr. WALKER, and the ranking Republican member on my subcommittee, Mr. SENSENBRENNER, for their efforts in crafting this legislation. I encourage all of the Members of the House to support this important bill.

Mr. WALKER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from California [Mr. BROWN], the chairman of the committee.

Mr. BROWN. Mr. Speaker, I thank the gentleman for yielding, and I include for the RECORD the full text of my own statement and an explanation of the bill.

Mr. Speaker, I rise in support of the bill H.R. 1988, the National Aeronautics and Space Administration Act, fiscal year 1992. We have worked hard to accommodate the concerns and priorities of our counterparts in the other body and I am pleased with the compromise that this legislation represents.

I want to thank all of the members of the Committee on Science, Space, and Technology who participated in developing this piece of legislation. I especially want to recognize the efforts of the gentleman from Pennsylvania [Mr. WALKER], ranking Republican member of the committee. I also want to thank the gentleman from Texas [Mr. HALL], chairman of the Subcommittee on Space, and the gentleman from Wisconsin [Mr. SENSENBRENNER], ranking Republican of that subcommittee. Finally, I want to thank the gentleman from North Carolina [Mr. VALENTINE], chairman of the Subcommittee on Technology and Competitiveness and the gentleman from Florida [Mr. LEWIS], ranking Republican of that subcommittee.

H.R. 1988 represents many months of hard work to establish funding priorities and develop policy guidance for our Nation's space program. I want to take a moment to explain the process that has brought us to this point. The bill was originally passed in the House on May 3 of this year and an amendment in the nature of a substitute was passed in the Senate on September 27. In the intervening period, we have informally developed a compromise bill which we expect to receive expeditious consideration in the other body. I believe that the compromise that we have reached is fair and preserves the essential elements of the House bill and accommodates the position of the other body in areas where we have tended to diverge.

Mr. Speaker, I would like to insert in the RECORD a statement describing the main provisions of the compromise bill and an explanation of the funding levels we have agreed on. With your permission, I would like to highlight some of the major elements of the bill.

The bill provides a total of $15.159 billion for fiscal year 1992 representing a reduction of $594 million from the President's request. The bill also provides aggregate budget authority for fiscal years 1993 and 1994 which assumes a 5 percent real growth from the fiscal year 1992 appropriated level.

The bill provides full funding for the space station Freedom, the subject of a great deal of debate earlier this year.

Funding is provided for continued definition studies of the new launch system and we intend to review this program carefully this year.

Funding has been provided for a wide variety of scientific and environmental programs as well as aeronautical programs such as the National Aerospace Plane.

The bill includes a provision which requires NASA to submit a special 5-year budget plan including life-cycle costs for all major developmental programs.

The bill includes a feasibility study for a National Scholars Program intended to increase the number of Ph.D. recipients from among economically disadvantaged groups.

The bill establishes a program for drug and alcohol testing for Government and contractor personnel involved in sensitive safety or national security related duties.

The bill also addresses the commercial space sector and provides funding for the Department of Transportation's Office of Commercial Space Transportation and the Department of Commerce Office of Space Commerce.

During the course of bringing this compromise bill to the floor, the committee became aware that the form of our authorization for certain programs specifically identified in the bill may be inconsistent with the rules of the House because of the timing of this bill as compared with the corresponding appropriations bill. It is not our intention to overstep the jurisdiction of the authorizing committee, particularly where it relates to clause 5 of rule XXI of the rules of the House. However, it remains our contention that the setting of certain programmatic priorities and restrictions is wholly within our jurisdiction as a policy and oversight committee and within the spirit of the rules that have defined the roles of authorizing committees. Therefore, not withstanding the change in the legislative form of the programs specifically authorized in this bill, it is our expectation that NASA will endeavor to provide funding for these programs at the levels specified in the bill in the operating plan that is submitted to Congress. Obviously, conflicts with levels otherwise specified in the Appropriations bill must also be accommodated and the committee will, as always, remain open to reasonable alternative funding plans if such are necessary.

Mr. Speaker, this is a visionary piece of legislation that sets forth clear congressional priorities, establishes funding requirements and addresses critical policy guidelines.

This has been a difficult time for our Nation's space program and it is of the utmost importance that Congress continues in a strong leadership role and that we work toward a consensus on the direction of our space program and its long-term funding stability. Earlier this year we received the report of the Advisory Committee on the Future of the U.S. Space Program. That report, popularly called the Augustine report, set forth as a critical recommendation that the budget of the National Aeronautics and Space Administration increase by 10 percent per year in real terms. The final appropriation for NASA this year represented a decrease in real terms. As a result, many valuable scientific and engineering programs will be severely impacted

I very much support the recommendation for stable and increasing budget. However, it is clear that we may not have the overall budget flexibility to provide the growth recommended by the Augustine report. However, I believe that a 5 percent real growth, half that recommended by Augustine, is achievable. This bill provides for that 5 percent real growth over the next several years. It is my sincere hope that Congress can reach a clear agreement on this or some predictable level of real growth.

We cannot expect NASA to manage its programs efficiently and accomplish the challenging goals our Nation has set for the civil space program without a budget plan that stands a reasonable chance of being implemented and clearly lays out the most important priorities.

Mr. Speaker, this concludes my statement. I urge my colleagues to support H.R. 1988 and give it speedy passage.

EXPLANATION OF H.R. 1988

OVERVIEW AND SUMMARY OF MAJOR PROVISIONS

The Bill provides $14.896 billion in new budget authority and amends previously provided budgetary authority to authorize a total of $15.159 billion for FY 1992. This represents a reduction of $594 million from the President's request.

The Bill also provides general new budget authority for the next two fiscal years in the amount of $15.601 billion for FY 93 and $16.959 billion for FY 1994. These authorizations represent a 5% real growth per year, accounting for an annual inflation of 3.8%, from the fiscal year 1992 appropriated level.

Specific funding initiatives include the following:

The bill provides $2.029 billion, the full request, for Space Station Freedom. Of this amount, $18 million is authorized for design

and development of an Assured Crew Return Vehicle.

Up to $40 million is provided for propulsion technology studies and $10 million for vehicle design studies including single stage to orbit vehicles in order to establish a firm technology base for a possible New Launch System. The Committee intends to thoroughly review the need for and potential roles of such a New Launch System pending the availability of a substantive program plan and detailed budget submission.

The bill provides, within Physics and Astronomy, $3 million to carry out scientific programs which were eliminated from the Station due to the reduction in attached payload accommodations.

Within Earth Sciences, the bill provides $5 million for Landsat data purchases at the cost of reproduction and authorizes funding for long lead Landsat parts in order to preclude a gap in data coverage. $1 million has been made available for other remote sensing data conversion from Defense related data bases and $3 million has been provided for a pilot study with the objective of making aircraft and satellite remote sensing data available for Global Change research in machine readable form. The Committee expects Department of Energy capabilities to be brought to bear on this effort. Finally, the bill provides $2 million for the conversion of archived Landsat data into a more durable medium. The Committee places a high priority on the maintenance of a consistent and usable set of Landsat data both in the past and in the future.

Within Space Technology, the Bill provides $10 million for solar power research and technology development and $10 million for a program of component technology development, validation and demonstration directed at commercial launch competitiveness. The Committee expects that, in carrying out this program, close coordination and cooperation is established with the private sector and with Agency elements responsible for the procurement of launch services for Government payloads. One major goal of this program is to reduce the cost of launch services for the Government.

Also within the Space Technology account, the Bill provides $15 million for telerobotics research in order to capitalize on the investment made in the Flight Telerobotic Servicer program. The Committee expects that NASA will incorporate the results obtained to date in developing a robust long term activity in this area, and will explore ways in which hardware and software advances from the Flight Telerobotic Servicer program can be incorporated into future telerobotics designs.

Within Space Shuttle production and operational capability, $375 million has been made available for the Advanced Solid Rocket Motor program. The Committee recognizes that this amount contains $50 million which was transferred from the Construction of Facilities account but not specifically provided for in the Appropriations bill. The Committee does not wish to restrict NASA's budget authority for Construction of Facilities and therefore would support a reprogramming for ASRM, if necessary, to meet total FY 1992 requirements for the program.

Also within this general account, the Committee has provided $112 million for the Assured Shuttle Availability program. A general $10 million reduction has been applied without prejudice.

Within Launch Services, funds have been authorized for the launch of the Mobile Satellite provided that all administrative and judicial uncertainties with respect to the status of the license are resolved and a plan of reimbursement from other Federal Agencies for their share of usage.

The bill amends previously provided budgetary authority for the Comet Rendezvous/Asteroid Flyby—Cassini program to reduce the amount available for FY 1992 with a concomitant increase in the total program amount made available through program completion. The Committee has taken this action in view of the severe shortfall in agency-wide appropriations in FY 1992 but has maintained its commitment to a full program authorization. The Committee, however, will revisit this commitment in the event that foreign participation in this program does not materialize.

Special reprogramming authority for transatmospheric research and technology has been provided within the Research and Development account in order to provide NASA the flexibility to commit sustaining funds, in combination with appropriated amounts from Department of Defense, for the continuation of the National Aerospace Plane program.

The Bill establishes a Facility Maintenance Office within the Office of Management Systems and Facilities in order to centralize programmatic authority for planning, budgeting, and carrying out an agencywide facility maintenance program.

The Bill includes a provision which requires a special 5-year budget plan for developmental programs in excess of $200 million. The programs reported in this submission must include an estimate of life-cycle costs. For the purposes of this submission, life-cycle costs must include, as a minimum, ongoing annual mission operating budgets, data analysis programs, planned hardware upgrades, and other costs that will be incurred in future years. The intent of this provision is to provide the Committee with specific information to enable prudent decisions to be made in allocating funds for the immediate fiscal year.

The Bill includes a National Scholars Program feasibility study intended to review options for increasing the number of PhD recipients among economically disadvantaged groups.

The bill authorizes for the Department of Transportation up to $20 million for a program to ensure the resiliency of the Nation's space launch infrastructure by improving the efficiency and effectiveness of launch facilities. The availability of this authority is subject to the enactment of subsequent legislation establishing a grant type program for managing and allocating these funds.

The Bill establishes a drug and alcohol testing program for all safety-sensitive, security, and national security employees working at NASA or with NASA contractors. This testing program mandates random, preemployment, post-accident, and reasonable suspicion testing, while authorizing periodic testing. While not mandating rehabilitation for an employee who tests positive, the Bill precludes such an individual from returning to a safety-sensitive, security, or national security position until a rehabilitation program has been completed.

The Bill directs the Administrator to incorporate Department of Health and Human Services guidelines on laboratories and testing procedures. In addition, the bill mandates a series of procedural safeguards which promote individual privacy, require the confirmation of drug and alcohol tests by a scientifically recognized method capable of providing quantifiable data, require split samples that will allow samples to be retested, provide for the confidentiality of test results, and ensure that the selection of employees for testing must be by nondiscriminatory and impartial methods.

The Committee recognizes that NASA has implemented a Drug Free Workplace Program pursuant to Executive Order 12546 and that testing for illegal use of controlled substances by NASA employees has been conducted since March, 1989. The Committee has included this provision in the Bill to codify this existing drug testing program for employees in designated positions, as well as to require testing for alcohol and to extend these testing requirements to NASA contractors in certain positions. Enactment of this section is not intended to disturb the drug testing program already underway at NASA. Nor is it the Committee's intent to expand the testing population beyond the pool of testing designated positions already identified by NASA. NASA has done a great deal of work in the drug testing area and this language is not intended to threaten the validity or the scope of the current program.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION BUDGET SUMMARY

[In million of dollars]

	Fiscal year 1991 appropriation	Fiscal year 1992 authorization					
		Presidential request	House authorization		Senate authorization	Compromise authorization	
			Amount		Amount	Amount	
Research and development	6,023.6	7,198.5					
Space Station	1,900.0	2,028.9	2,028.9		2,028.9	2,028.9	
Space Transportation Capability Dev	602.5	879.8	679.8		704.8	679.8	
Upper Stages	82.2	108.5		(−20)		(−20)	(−20)
Spacelab	129.3	150.2		(−10)		(−10)	(−10)
Engineering and Technical Base	208.5	235.2		(−15)			(−15)
Payload Operations and Supp. Equip	101.5	144.5		(−15)		(−15)	(−15)
Tethered Satellite System	21.9	12.6					
Advanced Programs	35.2	53.8		(−15)		(−15)	(−15)
New Launch System	23.9	175.0		(−125)		(−125)	(−125)
Launch Technology Program						(+10)	
Space Science and Applications	2,429.6	2,934.6					
Physics and Astronomy	975.1	1,140.6	1,096.6		1,128.6	1,104.6	
Gamma Ray Observatory Dev	22.0	0.0					

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION BUDGET SUMMARY—Continued

[In million of dollars]

	Fiscal year 1991 appropriation	Fiscal year 1992 authorization							
		Presidential request	House authorization		Senate authorization		Compromise authorization	
			Amount		Amount		Amount	
Advanced X-Ray Astrophysics Fac	101.2	211.0		(−38)				(−30)
Globak Geospace Science	96.6	65.3						
Shuttle/Spacelab Payload Mission Mgmt	88.8	88.0						
Space Station Utilization	3.0	0.0						
Payload and Instrument Dev	94.6	115.9		(+6)				(+3)
Explorer Development	99.8	107.9						
Mission Operation and Data Analysis	313.3	388.4						
Research and Analysis	100.8	103.1		(−12)		(−12)		(−9)
Suborbital Program	55.0	61.0						
Life Sciences	138.0	183.9	183.9		144.4		163.9	
Human Space Flight and System Eng	81.1	89.7						
Resarch and Analysis	56.9	79.2				(−24.5)		(−5)
Lifesat	(2.0)	15.0				(−15)		(−15)
Planetary Exploration	457.1	627.3	299.3		299.3		299.3	
Ulyses Development	3.0	0.0						
Mars Observer	78.5	54.4						
Mars Balloon Relay Experiment	1.5	1.2						
CRAF/Cassini	145.0	328.0	[328.0]		[263.0]	(−65)	[263.0]	(−65)
Mission Operations and Data Analysis	161.2	150.5						
Research and Analysis	67.9	93.2						
Space Applications	859.4	982.8						
Earth Science and Applications	667.9	775.6	725.6		785.6		756.6	
Earth Observing System	191.0	336.0		(−75)				(−50)
Earth Probes	54.7	68.2		(+10)				(+20)
Remotely Piloted Aircraft	0.0	5.0						(−5)
Upper Atmosphere Research Satellite	64.0	18.2						
Ocean Topography Experiment	76.0	51.9						
Payload and Instrument Development	49.7	48.6		(−5)				(−5)
Mission Operations and Data Analysis	39.4	56.3		(+5)		(+2)		(+3)
Research and Analysis	193.1	191.4		(+5)		(+8)		(+8)
Materials Processing	102.3	125.8	115.8	(−10)	125.8		120.8	(−5)
Communications	52.5	39.4	39.4		39.4		39.4	
Information Systems	36.7	42.0	42.0		42.0		42.0	
Commercial Programs	86.0	150.0	(134.0)		150.0		(139.0)	
Technology Utilization	24.4	32.0	27.0	(−5)	(32.0)		32.0	
Commercial Use of Space	61.6	118.0	107.0	(−11)	(118.0)		107.0	(−11)
Aeronautical Research and Technology	512.0	591.2	591.2		591.2		591.2	
Transatmospheric Res. and Tech. (NASP)	95.0	72.0	72.0		72.0		72.0	
Space Research and Technology	(255.9)	(354.8)	314.8		354.8		324.8	
Research and Technology Base	125.7	141.6						
In-Space Flight Experiments	11.2	16.0						
Civil Space Technology Initiative	119.0	114.3						
Space Automation and Telerobotics	(22.2)	82.9		(−40)				(−40)
Commercial Launch Veh R&D								(+10)
Exploration Activities	(34.5)	(67.0)	66.5		0		34.5	
Exploration Technology	27.5	52.0		(−5)		(−52)		(−24.5)
Exploration Mission Studies	7.0	15.0				(−15)		(−8)
Safety, Reliability and Qual. Assurance	33.0	33.6	33.6		33.6		33.6	
Academic Programs	55.1	64.6	64.6		64.6		64.6	
Tracking & Data Advanced Systems	20.0	22.0	22.0		22.0		22.0	
Space, flight, control and data com	5,124.4	5,608.3						
Shuttle Production and Ops. Cap	1,276.4	1,288.9	1,358.9		1,338.9		1,328.9	
Orbiter Operational Capability	275.6	273.8		(+30)				
Propulsion Systems	747.8	622.7		(+50)		(+50)		(+50)
Launch and Mission Support	253.0	270.1						
Assured Shuttle Availability	0.0	122.3		(−10)				(−10)
Space Shuttle Operations	2,790.0	3,023.6	2,965.1	(−58.5)	2,984.6	(−39)	2,970.6	(−53)
Flight Operations	801.5	912.5						
Flight Hardware	1,393.3	1,417.0						
Launch and Landing Operations	595.2	694.1						
Launch Services	229.2	341.9	315.9		290.9		291.9	
Launch Services	229.2	341.9		(−36)		(−51)		(−50)
Commercial Launch Veh R&D	0.0	0.0		(+10)				
Space and Ground Networks, Com	828.8	953.9	920.9	(−33)	920.9	(−33)	920.9	(−33)
Space Network	310.1	348.0						
Ground Network	260.7	291.7						
Communications and Data Systems	258.0	314.2						
Construction of facilities	497.9	480.3	430.3	(−50)	430.3	(−50)	430.3	(−50)
Research and program management	2,211.9	2,452.3	2,422.3	(−30)	2,432.3	(−20)	2,422.3	(−30)
Inspector General	10.5	14.6	14.6		14.6		14.6	
Total	13,868.3	15,754.0	14,938.0		14,999.5		14,896.5	
			15,266.0		15,262.5		15,159.5	
			−488.0		−491.5		−594.5	

Mr. Speaker, finally, with these parting words let me express my deep gratitude to all of the members of the Committee on Appropriations who worked so hard to authorize this program for us.

Mr. WALKER. Mr. Speaker, I join my colleague, Chairman BROWN, in supporting this legislation. Under his new leadership, the Science, Space, and Technology Committee was able to report every one of its authorization bills in advance of appropriations. I share his frustration that final passage of the NASA bill is not as timely as it could have been. This NASA authorization, however, contains a number of provisions which I believe will strengthen the Nation's Civil Space Program.

The bill contains full funding for space station Freedom, and makes available the necessary resources for the national aerospace plane.

I am especially pleased that we are taking two important steps toward multiyear funding. This is a policy which this committee has long advocated, and now it seems that the other body is beginning to agree with us. First, H.R. 1988 provides a total funding figure for fiscal years 1993 and 1994, which represents 5 percent real growth. Although we were not successful in breaking the outyear totals into their components, their presence in the bill sends a strong signal that we are committed to steady growth.

Second, this legislation contains language drafted by Mr. SENSENBRENNER, the ranking Republican on the Space Subcommittee, which calls on NASA to recommend specific programs which could benefit from a steady funding stream afforded by complete project authorizations. In my view, this provision will enable us to pursue multiyear funding in next year's authorization.

I thank Chairmen BROWN and HALL for their diligence in ensuring that we have a NASA authorization bill this year.

Mr. KYL. Mr. Speaker, I am pleased to note that the House Committee on Science, Space, and Technology has included language in its conference report which will reverse its earlier

deferment of the multifunctional electronic display system [MEDS].

MEDS is informally known as the glass cockpit. It would replace the existing shuttle cockpits with electronic displays, such as the flat panel displays developed for commercial and military aircraft. MEDS will increase shuttle reliability and flight safety and reduce operating costs.

MEDS funding is part of NASA's Assured Shuttle Availability [ASA] Program. Though the original committee report reduced the ASA Program by $10 million by specifically designating the deferral of the MEDS program, members of the committee recognize that NASA officials should determine which elements of the ASA Program may be reduced without jeopardizing the shuttle program. In its conference report, the Committee on Science, Space, and Technology provides that the ASA savings of $10 million is without prejudice and is no longer intended to be specifically or solely targeted against the MEDS program.

I believe the MEDS program deserves a very high priority in the Assured Shuttle Availability Program, and appreciate the committee's decision to leave specific designations to the discretion of NASA officials.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

GENERAL LEAVE

Mr. BROWN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore (Mr. MFUME). Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

ADJOURNMENT TO TUESDAY, NOVEMBER 12, 1991

Mr. MCNULTY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Friday, November 8, 1991, it adjourn to meet at noon on Tuesday, November 12, 1991.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. MCNULTY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

THE MEDICAL CARE INJURY COMPENSATION REFORM ACT OF 1991

(Mr. KYL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KYL. Mr. Speaker, the American people have made clear their desire that Congress reform the delivery of health care in this country, and politicians have responded with proposals long on promise, but short on specifics. Especially troublesome are promises of free national health care. Someone once said, for every complex problem there is a simple—and wrong—solution. National health care is just such a wrong solution. The American people do not want "one size fits all" health care. Instead, we need to identify each of the courses of the problems and address them specifically.

I have attempted to do that with H.R. 3516, the Medical Care Injury Compensation Reform Act of 1991. It specifically addresses tort reform, product liability, obstetric malpractice, and insurance for community and migrant health centers among other things.

The bill is cosponsored by my colleague from Texas, CHARLES STENHOLM. I urge all of you to cosponsor our bill, and include in the RECORD at this point a further explanation in testimony I gave to the Joint Economic Committee Subcommittee on Education and Health. This legislation is not just a promise; it is a solution.

TESTIMONY OF CONGRESSMAN JON KYL ON H.R. 3516

Mr. Chairman, thank you for allowing me this opportunity to testify before the Joint Economic Subcommittee on Education and Health regarding the Kyl-Stenholm medical malpractice tort reform bill, H.R. 3516. My colleagues and I are here today because we realize the importance of health care and the difficulties many Americans face in obtaining that care because of the prohibitive cost of insurance and treatment.

We may disagree about the solutions. Rather than a "one-size-fits-all" national program that attempts to address all aspects of the health care problem, I believe we must try to isolate each of the causes creating the problem and develop programs to deal with them individually. In considering any kind of reform, we must concentrate on preserving the high quality of care and innovation that people have come to expect without our system. In order to do so, a series of reforms must be adopted to reduce costs and expand accessibility. Medical malpractice tort reform is one of the essential components of an overall program to actually lower costs without decreasing the quality of care.

Medical malpractice premiums are the fastest growing cost expenditure facing physicians and medical institutions. According to the American Medical Association (AMA) Socioeconomic Monitoring System surveys, premiums for physicians fees in 1988 had increased 174% over 1982 premiums. In 1989 alone, medical insurance premiums added $5.6 billion to the cost of health care in America. Indirect professional liability costs such as redundant testing and defensive medicine added another $15.1 billion, bringing total professional liability to $20.7 billion.

These costs are having a significant impact on the individual physician. In my home state of Arizona, for example, obstetricians pay an average malpractice insurance premium of $52,900 per year. They are forced to either pass this cost along to their patients or to enter different specialties.

Institutions also are confronting the high cost of premiums. Community and Migratory Health Care Centers, which treat the majority of our poor and uninsured, are confronted with $58 million per year malpractice premiums even though only $3 million to $8 million in claims have been filed against them on average since 1982. This is money that they could be using to treat additional patients rather than paying for high insurance premiums.

Our current system also promotes the awarding of large sums of money to a few individuals, which significantly increases health care costs.

The Kly/Stenholm bill takes a multifaceted approach in dealing with all these problems. The Medical Care Injury Compensation Reform Act of 1991 first seeks changes in the handling of malpractice cases by giving states grants to establish alternative dispute resolution systems (ADRS). These ADRS will allow people to have their claims reviewed without having to go to court and pay large attorneys' fees.

Title I of the bill requires the Secretary of Health and Human Services to provide grants to states for the implementation and evaluation of innovative systems to settle medical liability disputes. States will have the ability to design systems tailored to their needs. Each system will be examined and approved by the Secretary for a two year grant. After the two-year period, the state will have the option of extending the grant for an additional two years.

The Secretary also will collect and disseminate information regarding the outcomes of the various ADRS to interested parties. States desiring to implement their own ADR or fine tune their existing program will be able to examine programs from around the country and determine what is effective.

The second section of the bill imposes federal tort reform, although states could always have more stringent laws. Our reform changes the standard of care in medical malpractice cases from "reasonable and prudent" to "reasonable".

Another reform is delineation of a series of damage limits. These include: limiting noneconomic losses to $250,000; requiring mandatory periodic payments for damages exceeding $100,000; limiting attorney's contingency fees to 25% for the first $150,000 and 15% to amounts greater than $150,000; requiring mandatory offsets for damages paid by a collateral source; requiring liability to be several only and not joint, with the defendant being liable only for the amount of noneconomic damages proportional to the defendant's percentage of responsibility; and limiting punitive damages to twice the compensatory damage award.

In addition, a state may opt to develop its own standards which exceed the federal minimum standards provided by the HHS/Federal guidelines. If more stringent guidelines developed, these would apply to all services provided in the state (both public and private.)

The statute of limitations would be two years from the time the injury was or should have reasonably been discovered.

Fourth, regarding obstetric services, health care practitioners who are seeing a woman for the first time during the labor and/or delivery of a baby could not be held liable for problems resulting from the term of the pregnancy. The health care practitioners could still be held negligent for their actions during labor and delivery.

Fifth, with respect to product liability, if a health care producer of medical devices or drugs goes through the Food and Drug Administration approval process, punitive damages could not be awarded in medical product liability claim. However, if a company withholds information or misrepresents the product during the approval process, punitive damages could be assessed.

Sixth, a nationwide insurance risk pool would be created for Community and Migrant Health Centers. Since Community and Migrant Health Centers have such a low rate of medical malpractice cases against them, creating a risk pool specifically for those centers would reduce their medical malpractice insurance costs.

As you can see, the Kyl/Stenholm approach to tort reform includes many component parts, but deals with specific problems. It does not tempt to solve everything in one bill. I think that is the best approach to this very complex challenge.

TEAR DOWN THE BUDGET WALL AROUND THE PENTAGON

(Mr. CONYERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. CONYERS. Mr. Speaker, today I am introducing, on behalf of myself and 10 colleagues on the Committee on Government Operations, legislation to amend the Budget Enforcement Act of 1990.

Simply put, our bill will bring down the wall that currently separates the defense budget from the domestic and international budgets. This wall was erected by the Budget Enforcement Act for Fiscal Years 1992 and 1993, preventing any shifts in spending among these three categories until fiscal year 1994.

Our bill would tear down this wall one year early, allowing Congress to transfer funds from defense to the other accounts.

The American people are demanding action. They want the Government to help them and their families.

This bill is a vital first step if we are to bring our budget into accord with the realities of the more favorable international scene and our more desperate domestic conditions.

We cannot afford to keep our Nation in a budgetary strait jacket.

As New York Governor Cuomo eloquently stated yesterday;

By allowing funds to be transferred between defense and domestic spending, Representative Conyers' bill will allow us to respond to changing world events with fiscal priorities that reflect the best use of scarce federal resources.

I ask permission to include in the RECORD the statement of Governor Cuomo, the lead editorial from yesterday's New York Times, and the statement of principles from over 50 major national citizens groups in support of these reforms.

I urge my colleagues to join us in cosponsoring the Budget Process Reform Act of 1991. We must take the budget off auto-pilot and reassert our ability to respond to the needs of the American people.

Mr. Speaker, I include the following material:

STATEMENT BY GOVERNOR MARIO M. CUOMO

I commend Rep. John Conyers (D–MI) for his efforts to make the federal budget process more responsive to changes in fiscal priorities. Rep. Conyers has introduced a bill that would eliminate the walls between defense, domestic and international spending in 1993 created by last year's budget agreement. The measure would allow defense savings to be transferred to domestic spending, and is a necessary step toward the essential reordering of national priorities.

One year ago, the Administration and Congress announced with great fanfare that the new budget process would put the nation on the path to economic growth. We were told that, while we would have to swallow hard and agree to painful tax measures at the outset, the federal budget would be balanced by 1995.

Today, the emptiness of that promise is apparent. The budget agreement's heralded fiscal discipline has failed to stop the flow of red ink, with the 1992 budget deficit expected to be $362 billion, the largest in our nation's history—$133 billion larger than projected under the budget agreement. Worse still, we have a five-year budget plan that locks in the recession because it does not contain an effective economic growth component or an investment plan for America.

Although the budget agreement originally was touted as an ingenious mechanism to protect the federal budget from the unruly political process, it is now apparent that the Administration designed the agreement in a cynical effort to immobilize the federal government until after the presidential election. However, with the momentous changes taking place in the Soviet Union and the declining economy at home, Democrats are beginning to take action to release the federal budget process from the strait-jacket of the budget agreement.

By allowing funds to be transferred between defense and domestic spending, Rep. Conyers' bill would allow us to respond to changing world events with fiscal priorities that reflect the best use of scarce federal resources. At the same time, since the bill retains the same overall cap on appropriations, it would maintain needed fiscal discipline. In a $15 trillion budget, it should be possible to substantially reorder priorities to meet the needs of all Americans. Conyers' bill is a responsible fiscal measure that deserves Congress's and the Administration's support.

THE LAW THAT ATE THE FUTURE

The Budget Agreement. It was the Holy Grail of 1990, the painful compromise between a Republican President and a Democratic Congress. It was holy because both sides solemnly pledged to abide by the deal for five years, and grail because the quest for honest deficit reduction took so many elusive turns. "Read my hips," President Bush gibed—before finally accepting new taxes after all.

The same agreement has, in a different world, become the hair shirt of 1991, scratching at members of Congress who think the deal has gone sour yet feel a duty to stick with it. The truth is, however, that to preserve the 1990 budget agreement, it must be scrapped.

That's not sophistry. The budget law was designed to lower the deficit by $500 billion over 5 years, thereby spurring investment and economic growth. Had the world stayed put, it might have worked.

But 1990 was a light-year ago. Then, the Soviet Union was a military menace; now it barely survives as one country. Huge military programs justifiable a year ago make no sense today. And, compared with a year ago, the estimated cost of financing the Administration's defense program has soared so fast as to break the spirit of the budget agreement. To meet the deficit target now would force savage, unanticipated gouges in domestic programs.

It's easy to forget that deficit reduction is not an end in itself. Its purpose is to slow Washington's raid on private capital markets, freeing funds for investment. But viewed a year later, the budget law now threatens to protect private investment by trashing public investment in education, job training, transportation and research. That's why Congress must change the law.

The 1990 law called for reducing the deficit gradually. The cuts were backloaded, that is they bite especially hard after 1993, in order to avoid punishing the sluggish economy. And the law imposed an unprecedented pay-as-you-go discipline that would force Congress to pay for new entitlements with tax hikes or spending cuts.

So far so good. But the leadership imposed—without consultation or debate—a pernicious condition. For three years, non-entitlement spending would be capped in a way that would keep Congress from switching defense savings into domestic programs. Not until 1994 could non-entitlement spending be raised. What kind of sense does that make in this post-Communist world when Americans urge their Government to look homeward?

One remedy would be to collect the peace dividend now and use it to reduce the deficit, as the budget law would allow. But that's unlikely. Congress won't spit in the eye of defense contractors and workers on behalf of abstract virtue. If the choice is deficit reduction versus defense, defense will win every time.

Another remedy would be to stick with the budget agreement until 1994 before cashing in the peace dividend, letting unnecessary defense programs survive temporarily. But that turns out to be masochistic. New weapons systems, once started, can't be instantly stopped. The wasteful expenditures will roll along well past 1994, a course ruinous to worthy domestic programs.

The Congressional Budget Office provides a frightening estimate. If military spending proceeds as agreed last year, come 1994 and 1995 all non-entitlement spending will have to be sliced by a whopping 10 percent. Such cuts would brutalize investments in education, job training, technological research and every other public investment—unless the country starts collecting the peace dividend now. That means renegotiating the budget agreement.

Broadly speaking that's hardly a novel idea. In recent weeks, members of Congress have rushed to propose that defense reductions be used for neither deficit reduction nor public investment. They want—an elec-

tion year's coming up—tax cuts. This is a dangerous, cynical game.

Because the budget law was backloaded, the largest share of spending cuts was scheduled for 1994 and 1995. Even if taxes were not reduced one dollar, all manner of domestic programs would have to be savaged just to meet the modest deficit-reduction goal.

Preserving desperately needed public spending will require the entire peace dividend, and then some. To give it away in tax cuts borders on the unconscionable. Still deeper cuts in defense are needed; every cent of tax revenue is needed; the budget agreement is not.

WE MUST INVEST IN AMERICA NOW

We, the undersigned organizations, have joined together to strongly urge the Congress and the Administration to reorder the nation's fiscal priorities.

The standard of living of a majority of Americans has declined or stagnated in recent years and the nation's competitive position in the world economy has eroded. Meanwhile, the United States has devoted a much larger share of its national resources to the military than have most other Western nations. Now, the end of the Cold War and the crumbling of the Soviet military threat present us with an historic opportunity to reinvest in America—to address long neglected domestic needs and to get the economy growing again.

In order to take advantage of this opportunity, Congress and the Administration need to modify the budget agreement reached a year ago and alter our priorities. In doing so, Congress and the Administration should apply the following principles.

STATEMENT OF PRINCIPLES

1. Congress and the Administration should reduce defense expenditures in FY 1993 significantly below the levels projected in the President's FY 1992 five-year plan. These savings should be used for needed public investment that can redress unmet domestic needs, build human capital and promote long-term economic growth.

2. Congress and the Administration should allow for the transfer of funds from defense to domestic discretionary spending programs in FY 1993, while maintaining the overall deficit reduction goals set forth in the budget agreement.

3. Congress and the Administration should not use defense savings or other discretionary funds for tax cut purposes. Instead the Congress and the Administration should finance any personal income tax relief package by shifting the tax burden to upper-income taxpayers.

We strongly believe that redirecting Federal resources according to these principles will promote economic growth at home and strengthen America's economic security and leadership in an increasingly competitive global market.

ORGANIZATIONS THAT HAVE SIGNED ON PRINCIPLES

U.S. Conference of Mayors.
American Federation of State, County and Municipal Employees.
OMB Watch.
Center for Budget and Policy Priorities.
Friends of the Earth.
Council for a Livable World.
Americans for Democratic Action.
National Association of Social Workers.
National Urban League.
Professional's Coalition for Nuclear Arms Control.
Service Employees International Union.
National Commission for Economic Conversion & Disarmament.
American Nurses Association.
The Coalition on Human Needs.
American Planning Association.
AIDS Action Council.
Bread for the World.
The United Methodist Church, General Board of Church and Society.
SANE/FREEZE: Campaign for Global Security.
United Food and Commercial Workers.
Women's Action for Nuclear Disarmament.
American Baptist Churches, U.S.A.
American Social Health Association.
Commission on Social Action on Reform Judaism.
Public Employee Department, AFL–CIO.
National Education Association.
Economic Policy Institute.
Fund for Human Dignity.
Center for Population Options.
Association of Schools of Public Health.
American Public Health Association.
American Home Economics Association.
Association of Flight Attendants.
National Council of Senior Citizens.
City of New York.
Children's Defense Fund.
National Council on Family Relations.
National Coalition for the Homeless.
YMCA of the U.S.A.
National Association of County Health Officials.
Food Research and Action Council.
U.S. Conference of Local Health Officers.
The Center for Public Dialogue.
Child Welfare League of America.

MIDDLE-CLASS TAX RELIEF AND FAIRNESS ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 5 minutes.

Mr. ROSTENKOWSKI. Mr. Speaker, today I am introducing legislation, H.R. 3730, that will give most Americans a tax cut, temporarily stimulate our economy and create a fairer income tax system. Specifically, my proposal would provide a tax credit to middle-income taxpayers, based on the Social Security taxes they pay. The middle-income tax relief proposal would be offset by increased taxes on the richest 1 percent of our population.

Mr. Speaker, this is a good plan, and I am proud of it. I predict that it will become central to the upcoming debate about how to make our tax system fairer. That debate will begin in earnest when the Ways and Means Committee begins hearings this winter.

These hearings will address a number of questions, including how to balance the goals of middle-income tax relief, economic growth and tax fairness. Most tax proposals we have seen focus on one at the expenses of the other. My plan is an attempt to simultaneously address all three.

Whether we should act, and if so, when, is an equally important question.

We have seen many recent tax relief proposals, with many different messages. Some encourage savings. Others encourage consumption. Some focus on children. Others benefit investors. Some focus on fairness for middle-income Americans. Others attempt to stimulate the economy. Each proposal has merit. Each responds to a concern.

Some proposals are financed, others not. For my part, I will demand that any tax cut be honestly paid for over 5 years and that the pay-as-you-go discipline enacted last year, be respected. Our fragile economy cannot tolerate another deficit increase.

Many different proposals have been suggested—IRA's, childrens' credits, capital gains cuts. Some wish to add these proposals together. Clearly the country and the economy cannot afford such a bidding war. Let's not forget our sad experience in 1981. If we walk away from the 1990 budget agreement and the pay-as-you-go discipline, there will be no restraint at either end of Pennsylvania Avenue. Also, a protracted political debate that would create additional uncertainty could harm the already weak economy.

The bill I am introducing today is simple. It would provide a refundable income tax credit in 1992 and 1993, based on a worker's social security taxes paid during the year 20 percent of the employee portion of FICA and SECA taxes. The credit would be capped at $400 for a couple filing a joint return and $200 for a single taxpayer or head of household.

For example, a married couple with annual wage or salary earnings of $20,000 would get a $300 tax cut. The maximum credit would be $400 for married wage earners. Couples with wage or salary income of $26,150 or more would receive the maximum tax relief.

Since the credit would be refundable, families with wages who pay no Federal income tax, would, nonetheless, see their disposable incomes increase.

There are more than 118 million working Americans. Each would receive this credit in 1992 and 1993, and take home more income throughout the year.

I want to emphasize that this tax cut does not jeopardize the Social Security Trust Fund. It does not reduce Social Security reserves building to fund the retirement of the baby boom generation after the turn of the century.

The bill would be financed by an increase in the taxes of wealthy individuals. First, it would establish a new fourth rate bracket of 35 percent for individuals with taxable income in excess of $145,000 for a couple filing a joint return, $84,000 for a single taxpayer, and $125,000 for a head of household. Former President Reagan proposed a top rate of 35 percent in his 1985 tax reform proposals. At no time did he ever propose a lower rate. The individual alternative minimum tax rate would also be increased from 24 percent to 25 percent. In addition, the bill would impose a surtax of 10 percent of the income of millionaires, making their statutory marginal tax rate 38.5 percent.

Over 5 years, this bill would be revenue neutral. In the first 2 fiscal years, the bill would lose some revenue—because I want to provide a short-term stimulus for the economy. However, the bill would replace that lost revenue over the next 3 years.

Mr. Speaker, the higher tax rate on wealthy taxpayers will not only finance the temporary tax relief, but will make the tax system fairer. It will offset the tax relief provided to middle-income taxpayers on their payroll taxes. However, the bill does not sunset the 35-percent rate bracket or the millionaires' surtax. The revenues from these tax equity provisions

would be available to reduce the deficit over the longer term. For me, deficit reduction is an added benefit to this proposal.

Mr. Speaker, this bill has a simple message—tax relief for middle-income working Americans, fully financed by fairer taxes on the wealthy.

I urge my colleagues' support for this important initiative.

PRIVATE CALENDAR AGREEMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia [Mr. BOUCHER] is recognized for 5 minutes.

Mr. BOUCHER. Mr. Speaker, I would like to take this opportunity to set forth some of the history behind the Private Calendar, as well as a description of the calendar.

Of the five House calendars, the Private Calendar is the one to which all private bills are referred. Private bills deal with specific individuals, corporations, institutions, and so forth, as distinguished from public bills which deal with class only.

Of the 108 laws approved by the First Congress, only 5 were private laws. But their number quickly grew as the new Republic produced veterans and veterans' widows seeking pensions and as more citizens came to have private claims and demands against the Federal Government. The 49th Congress—1885 to 1887—the first Congress for which complete workload and output data is available, passed 1,031 private laws, as compared with 434 public laws. At the turn of the century, the 56th Congress passed 1,498 private laws and 443 public laws, a better than 3 to 1 ratio.

Private bills were referred to the Committee of the Whole House as far back as 1820, and a calendar of private bills was established in 1839. These bills were initially brought before the House by special orders, but the 62d Congress changed this procedure by rule XXIV, clause 6, which provided for the consideration of the Private Calendar in lieu of special orders. This rule was amended in 1932 and then adopted in its present form on March 22, 1935.

A determined effort to reduce the private bill workload of the Congress was made in the Legislative Reorganization Act of 1946. Section 131 of that act banned the introduction or the consideration of four types of private bills: first, those authorizing payment of money for pensions; second, those authorizing personal or property damages for which suit may be brought under the Federal tort claims procedures; third, these authorizing the construction of a bridge across a navigable stream; or fourth, those authorizing the correction of a military or naval record.

This ban afforded some temporary relief but was soon offset by the rising postwar and cold war flood for private immigration bills. The 82d Congress passed 1,023 private Laws as compared with 594 public laws. The 88th Congress passed 360 private laws compared with 666 public laws.

Under Rule XXIV, clause 6, the Private Calendar is called the first and third Tuesday of each month. The consideration of the Private Calendar bills on the first Tuesday is mandatory unless dispensed with by a two-thirds vote. On the third Tuesday, however, recognition for consideration of the Private Calendar is within the discretion of the Speaker and does not take precedence over other privileged business in the House.

On the first Tuesday of each month, after disposition of business on the Speaker's table for reference only, the Speaker directs the call of the Private Calendar. If a bill called is objected to by two or more Members, it is automatically recommitted to the committee. No reservation of objection is entertained. Bills not objected to are considered in the House in the Committee of the Whole. On the third Tuesday of each month, the same procedure is followed with the exception that omnibus bills embodying bills previously rejected have preference and are in order regardless of objection.

Such omnibus bills are read by paragraph, and no amendments are entertained except to strike out or reduce amounts or provide limitations. Matters so stricken out shall not be again included in an omnibus bill during that session. Debate is limited to motions allowable under the rule and does not admit motions to strike out the last word or reservation of objections. The rules prohibit the Speaker from recognizing Members for statements or for requests for unanimous consent for debate. Omnibus bills so passed are thereupon resolved in their component bills, which are engrossed separately and disposed of as if passed separately. Private Calendar bills unfinished on one Tuesday go over to the next Tuesday on which such bills are in order and are considered before the call of bills subsequently on the Calendar. Omnibus bills follow the same procedure, and go over to the next Tuesday on which that class of business is again in order. When the previous question is ordered on a Private Calendar bill, the bill comes up for disposition on the next legislative day.

Mr. Speaker, I would also like to describe the official objectors system in the House, which has been established to deal with the great volume of private bills. The majority leader and the minority leader each appoint three Members to serve as Private Calendar objectors during a Congress. The objectors are on the floor ready to object to any bill which does not adhere to the guidelines established for consideration on the Private Calendar. Seated near the objectors are the majority and minority legislative clerks, to provide technical assistance. Should any Member have a doubt or question about a particular private bill, assistance can be provided by the objectors, the clerks, or from the Member who introduced the bill.

The great volume of private bills and the desire to have an opportunity to study them carefully before they are called in the Private Calendar have caused the six objectors to agree upon certain rules. The rules limit consideration of bills placed on the Calendar only shortly before it is called. The agreement adopted on June 3, 1958 provides for the consideration of bills only if they have been on the Private Calendar for a period of 7 days, excluding the day the bill is reported and the day the Calendar is called. Also, reports must be available to the objectors for 3 calendar days.

It is agreed to that the majority and minority clerks will not submit to the objectors any bills which do not meet this agreement. This policy will be strictly enforced except during the closing days of a session when House rules are suspended.

This agreement is entered into by the gentleman from Virginia [Mr. BOUCHER], the gentleman from Kentucky [Mr. HUBBARD], the gentleman from Maryland [Mr. MFUME], the gentleman from Wisconsin [Mr. SENSENBRENNER], the gentleman from Pennsylvania [Mr. GEKAS], and the gentleman from North Carolina [Mr. COBLE].

UPDATE ON THE AIDS VIRUS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BURTON] is recognized for 60 minutes.

Mr. BURTON of Indiana. I thank the Speaker. I will not take that long. But I do want to talk about a few subjects tonight, one subject that is very, very important.

Mr. Speaker, if the news accounts are correct, everybody in this country who is an athletic supporter who believes that we have some of the finest basketball players in America, is saddened tonight because it has been reported that one of the finest basketball players to ever play the game, Magic Johnson, has the AIDS virus and he is going to have to retire from basketball.

That saddens me because I have been one of his most ardent supporters over the years, although I have never had the opportunity to meet the man, but ever since he and Larry Bird played on the college scene I have had tremendous admiration and respect for both of them.

Mr. Speaker, this just points out once again to all of us that the AIDS virus is probably going to touch every single family in this country, and probably every one of us before the next decade is over is going to know somebody who has the AIDS virus or has died with it.

That brings us to this particular time and my plea to my colleagues on the House floor that we do not just sit back and let nature take its course. So far, the Congress of the United States has not taken any real positive action to deal with the AIDS pandemic facing this Nation.

Mr. Speaker, we have spent money on medical research and scientific research; we have tried to educate the population of this country. But none of this seems to have done much good.

In Uganda, yesterday, before my Subcommittee on Africa of the Committee on Foreign Affairs, the First Lady of Uganda testified, and she testified that they started a massive education program about 5 or 6 years ago to try to stem the tide of AIDS. She indicated that it had not been very successful.

That is because an educational program by itself is not going to solve the problem. They did a survey at Ball State University, and I said this last

night and I will say it again tonight, and they found that 80 percent of the college students at that university, a very fine university, right on the edge of my district, 80 percent of the college students were sexually active. And I suppose that is probably consistent with all the big colleges and universities across this country.

□ 1650

Mr. Speaker, the same kind of sexual attitudes are prevalent in our high schools. Here in Washington, DC, and this really needs to be paid attention to by my colleagues, they have found in the last 3 to 4 years at the hospitals here in Washington that there has been a 300-percent increase in the number of teenagers who have the AIDS virus who did not get it from a drug-related source. A 300-percent increase; it has gone from four-tenths of 1 percent to 1.3 percent.

Now that does not sound like a very high percentage, but, when one looks at how it is skyrocketing and looks at the graph, then they start realizing how really dangerous this situation is.

I looked at the graphs in Uganda yesterday. They had graph, after graph, after graph showing how the AIDS virus spread and how the people started dying from it, and the graph would start out at zero, and it would go like this, and then it would just bend very sharply upward. That is what happened to Uganda, and Uganda is about 5 to 6 years ahead of us as far as the epidemic is concerned—5 to 6 years ahead of us.

Now I want to give my friends who are in their offices and who are here some statistical data that is extremely important, and I know very few are going to pay attention, but I hope somebody does. We are going to have by the end of this year, using the new statistical data that the CDC is going to be putting out, between 250,000 and 300,000 people infected with the AIDS virus, or dying from it, or are already dead. Through September, using the old statistical gathering system, we have 159,718 cases of AIDS or people who are either infected with it or dying from it. And when we use that new statistical acquiring method that they are using, it is going to be much higher than that and, as I said, by the end of the year it will be between 250,000 or 300,000, or maybe a little higher than that.

By the middle of this decade, the mid-1990's, if we extrapolate these figures on out, we are going to have somewhere close to a million people dead or dying of AIDS by 1995, 1996, or 1997, and it could be worse than that because, once that graph starts up, once that arrow starts shooting skywards, like we have in Uganda, we will find we have a lot more people dead or dying of the virus than we anticipated, and that is why the people in Africa are having such a difficult time, because they do not have the resources at their disposal to deal with this problem. They have one doctor, one doctor in Uganda, for every 23,000 people. One doctor for every 23,000 people. They cannot cope with it. They do not have the money, they do not have the money in the Soviet Union, and in a lot of countries they are going to suffer dramatically because they cannot deal with this kind of a pandemic.

But we here in the United States are fortunate. We have the resources at our disposal and a governmental structure at our disposal that can deal with it, if we will. But we have not been. We relied on scientific research and education. Education has not worked. It has not changed the sexual attitudes of the young people in this country.

We tell them about safe sex, and we say, "Use condoms, and that will solve the problem." The fact of the matter is it will not solve the problem. One out of six to one out of four of the young people using condoms who come in contact with an AIDS-infected person can get it. They can get it. That is the transference rate, one out of six to one out of four, and so there is no such thing as safe sex outside of a monogamistic relationship, and yet that is what we have been led to believe. We do not know all the ways one can get AIDS.

As my colleagues know, Dr. Koop was our Surgeon General, and he said just a couple of years ago that it was impossible. He said categorically it was impossible to get AIDS from a doctor, a dentist, or a health care worker. Well, we now know that is not the case, and the people of this country in a recent survey said, 95 percent of them said, they ought to be able to know the HIV status of their health care deliverer, whether their doctor or dentist has AIDS, before they did an invasive procedure on them as a patient. So, we do not really know all we need to know about AIDS.

The segment of our society that is going to be the most adversely impacted in the next 10 to 20 years in my opinion is going to be the young people, the productive members of our society into the 21st century, the teenagers and the college age students, and it is in large part because the education simply has not gotten through to them. Eighty percent of the college students at this university I have mentioned a few moments ago, Ball State, say they are sexually active, and that is true across the country, and so a lot of those young people are going to come down with the AIDS virus. No family in this country is likely to be left untouched in the future.

So, Mr. Speaker, we need a comprehensive program to deal with it. We need to find out how it is spreading, all the ways it is spreading, where it is spreading, how fast it is spreading, and we need to develop a plan to come to grips with it. This program needs to consist, first and foremost, of a national testing program, a national testing program. It does not cost much. The U.S. Army tests everybody in the military for less than $5 every year, and, when one figures out that the entire population of this country could be tested annually, if the Government paid for it, and the Government would not have to, but if the Government were to pay for it, it would cost somewhere around $1.2 billion a year. We say that is a lot of money. I ask, "Shouldn't we spend that money on health care, and education and so forth?"

Mr. Speaker, I will tell my colleagues that there is an old saying: An ounce of prevention is worth a pound of cure, and each person that gets AID costs, before they die, between $100,000 and $150,000 to the health delivery care system of this country. That is what it costs, and, if we get a million people dead or dying of the AIDS virus, put a pencil to that, and see how much money that is going to cost this country. We would be looking at $100 billion to deal with the AIDS pandemic, if these projections are correct, through the middle of the 1990's. So, testing on a regular basis is a cost-effective way to at least find out who has it.

Then, in addition to that, we need to have contact tracing to stop people who have it from continuing to spread it, to find out when people get the AIDS virus, where they got it, so we can try to stop it from spreading further.

We need psychological help for those who have the AIDS virus because it is a traumatic experience for anybody. I mean they are going through all kinds of hell before they die from this virus. They are going to get lesions on their arms, and they are going to get thrush in their mouth, they are going to get all kinds of other diseases because their immune system will completely disintegrate, and many of them will get Kaposi's sarcoma, which is a very rare form of cancer which is very painful, before they die. So, we need to have psychological help for them.

We need to protect their civil rights, make sure their jobs, and their homes and everything else is protected, that their health care benefits are protected. That should be part of the equation.

And we need to have penalties imposed for those who know they have the AIDS virus and go out to spread it. We have people who are deliberately tonight going out and trying to find somebody in bars, or other kinds of establishments, to infect with the AIDS virus because they are upset they have it. They are deliberately infecting people. We also have prostitutes and other people who ply their trade at night who know they have the AIDS virus and are out infecting other human beings, de-

stroying lives and families, and so what we need to do with people who know they have it and continue to spread it, they need to be stopped. They need to be extricated from society just like a person who robs a bank, or shoots somebody or commits murder, because they are doing that.

So, Mr. Speaker, we need a comprehensive program to deal with it, and I know many Americans and many of my colleagues. They say, "Well, it's really not that bad." Well, I am telling them that it is that bad, and it is going to get a lot worse.

I am confident we will have a comprehensive program to deal with this in the next decade. The problem is how long are we going to wait before we do it? Are we going to wait until there is another million, or two million, or three million people infected with it, destined to die? A lot more heartache for their families and loved ones?

I do not know how Magic Johnson got this disease. We may never know, but maybe, just maybe, if there had been testing, he might have been able to avoid it.

We need to come to grips with this as a Nation. We are not doing it. I have been down in this well probably 20 or 30 times talking about it, and we really are not getting anyplace.

Kimberly Bergalis came up here, the young lady who was infected by her dentist down in Florida. She testified before the health subcommittee. She said that everybody ought to be tested. Doctors ought to tell their patients before they do invasive procedures if they have AIDS to protect them. She mentioned a lot of things that need to be done. Doctors and dentists have the right to know if their patients have AIDS before they work on them. All these things need to be done, but we are not doing it. We sit back and complain, but nothing is being done.

The problem with sitting back and waiting right now, my colleagues, is that the AIDS virus, as we speak, is continuing to spread. It is spreading around the world and in the United States. People who look perfectly healthy, who are very beautiful, very handsome, tonight are going to give AIDS to somebody else that they got 2 or 3 years ago. They do not know it, and the people who are going to get it do not know it, and those people are going to carry it up to 10 years without knowing they have it, and thus they will be infecting other people as well.

This is a very insidious disease. There is no manifestation of it until one gets active AIDS. So, the only way to find out if somebody has it is through blood testing.

□ 1700

So I would say to my colleagues, let us not keep our heads in this sack any longer. Let us be rational about this problem. Let us not have the problems they have in Uganda. We are probably going to have 3 million or 4 million people at the very least die of AIDS in this country. I think it is more like 5 million or 6 million, but we are going to have at least 3 million or 4 million die of AIDS in this country. Let us stop it at that. The best way to stop it at that level is to start testing, doing contact tracing, and getting the information necessary to come up with a battle plan to deal with it.

We are in a war against AIDS, and we are losing it. We need to declare war against it and do all the things that are necessary.

Last and not least, I would just like to say that the best way to avoid AIDS, I would say to young people and older people alike, is to have a monogamous relationship—one man and one woman. Any more than that is really playing Russian roulette. The Bible, the Koran, the Old Testament and the New Testament all set out moral guidelines for mankind, and when man deviates from those guidelines, he does it at his own peril. When we tell young people that safe sex involves using condoms, we are not giving them the right scoop, we are not giving them the right direction or the right answer. They have to realize that they have to cut it out. They have to deal only with one person for the rest of their lives. That is the only safe way to protect themselves against the AIDS virus, and even then there will be some innocent transmission through blood transfusions or through doctor-patient relationships to get the virus. And there will be other ways as well. So there is no guarantee that you will not get it, but one way to minimize your chances of getting the AIDS virus is to have 1 person as your mate for a lifetime.

So I would just say to my colleagues that maybe this stuff I am talking about sounds like pie in the sky, but I am confident we will have a comprehensive plan encompassing all the things I am talking about. The only question is whether we are going to do it now or 5 or 10 years from now when we have condemned another 5 million or 6 million people to death. I would opt for doing it now.

So I would like to say to my colleagues that I think we should get on with it. Let us do what is necessary quickly so we do not experience what is going to happen in Africa where they are going to have at least 10 million people dead or dying in the very near future, and ultimately maybe as many as 50 million people dying on that continent alone.

Mr. Speaker, I do not want that to happen to America. It need not happen if we do the right things.

MACHINE TOOL VRA EXTENSION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

Mrs. BENTLEY. Mr. Speaker, last Friday's Wall Street Journal reports the efforts Congressman HENRY HYDE, Congresswoman NANCY JOHNSON, Congressman DUNCAN HUNTER, and I have made trying to have an extension of the machine tool voluntary restraint agreements [VRA's] with some of our major trading partners.

The story points out that only the Commerce Department agrees with us and reports that Deputy Defense Secretary Donald Atwood came to the Hill to discuss our concerns that Defense request this necessary protection for this vital industry.

This industry—recognized by anyone knowledgeable about manufacturing to be the most critical to maintaining an industrial base—has been long discounted by Government economists.

These are the same economists who have been saying since the spring that the recession is over. These are the economists who heralded the advent of a service economy over a manufacturing economy and pushed us in that direction by refusing to protect our heavy industries against unfair dumping and predatory marketing practices.

Intelligence which I have just received today leads me to believe that Defense is trying to duck talking the necessary strong stand to save this vital industry. Every one of the other agencies—including the Trade Representative's Office, OMB, and so forth. Have identified this decision as one involving only the national security of the United States.

This is not trade policy, nor industrial policy—this is the security of the U.S. weapons producing capability on the line.

The U.S. machine tool industry lost 25% of its production capacity in the 1984–85 time period while the 232 petition findings of the industry languished at the National Security Council—but, more about that later.

Right now, the machine tool industry—suffering the recession—trying to recover the tremendous investments of the last 5 years—needs to be saved.

If it is not, then Secretary of Defense Dick Cheney and Deputy Secretary of Defense Don Atwood will be responsible for the loss of—possibly—another 25 percent of capacity—which will mean that foreign nations increasingly will be manufacturing our machine tools with the availability of all of the proprietory information for all of our weapons systems—totally free to sell off that information, or to have their own nations produce these weapons and compete with us in sales.

This is national security. It should not be considered as economics or politics—just the safety of this Nation.

One of the major reasons that we even had the 5 year VRA—and that poorly enforced—Germany and Swit-

zerland refused to comply—was because I personally urged President Reagan to act on the findings of the 232 investigation at Commerce—in 1984—which showed that seven of the major categories of machine tool manufacturing were threatened by growing market penetration of foreign producers.

Those findings were deep sixed inside the National Security Council for 26 months and until my conversation with the President, he had no knowledge of what was going on. Again, one man, Richard Levine—at that time in his twenties—held the power of life and death over a whole industry. He has since left government—to continue his education—in graduate school.

A pity. If he anticipates returning to serve his country in the government, we all would have been better served had he worked in a machine tool company for those 2 years and learned some real facts about the economics rather than more useless theory. We've had too much of that.

Now the tragedy of the National Security Council's action—that it behaved more as an outpost of the trendy economic theorists of the time—instead of acting with despatch on one of the truly major national security issues, the tragedy is, that in that 26 month period—more and more U.S. companies were lost either to foreign purchasers or to bankruptcy.

And remember, this was all happening at a time when the evidence was already in—already proven by our own Commerce Department—that the U.S. machine tool industry was under grave threat by foreign practices—and the action of the Commerce Department was on the basis of national security.

Overlooked in the whole issue of protection of our U.S.-owned machine tool producers is the tremendous potential machine tool production offers for industrial and defense espionage.

I have been following the fate of machine tools since the early thirties reading the papers and sometimes the industry publications. Headlines in the New York Times reported, "Japan Targets U.S. Machine Tool Industry," and no one ever questioned why.

It is an expensive industry to enter—major costs for start-ups. It is cyclical. It is high value added, but not noted for extraordinary profits. However, Japan targeted it. Why?

Because, he who makes your manufacturing machine—can eventually make your product. It is necessary when ordering a machine tool to tell the designers of the machinery which will make your product—a total description of the product the machine will have to make.

As a matter of fact, in the world of real espionage, the United States was eager to sell machine tools to the Russians in order to know the level of their expertise.

Japan, among the nations, has become infamous for getting and sharing among their industries proprietory information of other countries.

I suspicion that is why they wanted our industry.

Opponents of any kind of protection for machine tools or steel seem to ignore the economic structures of our trading partners which our industries are supposed to overcome unaided by our Government.

The European nations sit behind the wall of the value added tax using it as both an import barrier and as an export bonus for their companies. Not only in machine tools, not only in steel, but in every manufactured item seeking entrance to the EC markets there is—on average—20 percent is added at the port of entry. In like manner, when European items leave the EC, there is an income-tax free—on average—20 percent rebate to the European manufacturer.

In Japan, our manufacturers find they are competing for sales with manufacturers who are members of powerful keiretsu corporate families—so that Toshiba Machine Tool is one of 495 companies under the umbrella of the Toshibas Corp. It would be asking a lot to ask any of those other 494 companies to buy machine tools from any company other than their own.

Yet, facing this kind of protectionism—our companies are being asked to go it alone, and if they can't they are criticized for not being competitive.

Let's look at that charge—particularly in regard to the European Community. Europe is heavily unionized—more so than the United States. Most European countries allow 1 month of vacation for all employees and many have mandated family leave. Many countries also have 2-hour lunch breaks and, in some nations, everything—including supermarkets and many restaurants—closes down from Saturday noon until Monday morning.

Now, these workers may be good—but they are not that good. The difference between the 40- to 50-hour week worked in this country—when the economy is surging—is made up for by the 20 percent valued added tax.

We are among the hardest working nations in the world, but work alone cannot overcome a 20-percent advantage on a product. The liberal leave policies of the EC, the shorter working week, can only survive as long as they have the value added bonus protection.

And at no point over the last 30 years have we made any effort to address the inequity of this tax.

This year, Congressman RICHARD SCHULZE has introduced a uniform business tax law which can finally level the playing field with VAT nations and other countries which rebate taxes for exports and, it has none of the drawback of a value added tax.

This legislation—H.R. 3170—is basically a reform of U.S. corporate tax law. It is not adding a tax, but simplifying the computation of taxes. It is a border adjustment tax capable of fairly collecting taxes on foreign manufacturers inside this country, something we have not been able to accomplish thus far.

However, let me quote DICK SCHULZE on the provisions of the bill.

First, consistent with international practice, the Uniform Business Tax would exempt from taxes all export sales of American-made products thereby making them less expensive and more competitive in world trade.

Second, consistent with international practice, it would remove the present double tax on U.S. companies competing directly in foreign markets.

Third, in order to make American-made goods even more competitive in both U.S. and foreign markets, it would reduce the presently high cost of capital in the U.S.

Fourth, instead of continuing to compound and concentrate the tax burden on Americans, it would expand the U.S. tax base in a manner that is consistent with international practice—to include foreign owned companies that now participate in our economy to the tune of over $650 billion per year on a virtually tax-free basis.

That is a general description by Congressman SCHULZE of his bill. I am proud to be an original cosponsor because it so well addresses the problem of structural impediments inside other countries without having to adopt their methodology, as with the value added tax, expensive to administer.

DICK SCHULZE has come up with a brilliant concept which solves not only the problem of making our industries more competitive, but it simplifies and lowers the cost of tax filing for our companies without lowering the amount of taxes collected, and more importantly, it will guarantee that foreign manufacturing operations in this country will pay a fair share of taxes on their profits. This amount could be as high as $50 billion.

Were we to have this law in operation right now, it might not be necessary to consider an extension of the VRA's either for machine tools or steel but, currently there are no laws in place to balance off the unfair advantage enjoyed by most foreign producers coming into our market.

The only recourse we have at this time—if we are to save any of our heavy industrial base—is to use restraint agreements and/or restrictive tariffs. It is absolutely irrational to me that in the GATT proceedings we would be offering up 1.4 million manufacturing jobs in the textile industry when, no matter what we offer up, the barriers of the value added tax in the EC and the Keiretsu system in Japan will not change, nor will the Chinese Government stop using political prison labor.

I believe a look at any of the morning papers will give evidence aplenty that the economy needs some extraordinary measures to save the jobs we have left. We cannot afford to close one

more plant in the face of unfair foreign competition—no matter the complaints of our trading partners, the criticism of the comparative advantage economists.

We are at a time in the history of this country that we must act swiftly. We must be bold, we must hold on to whatever we have left and begin to imaginatively create and pass new laws which will enable us to maintain our preeminance in the world. Extension of the VRA's for machine tools and steel will do the one, H.R. 3170 will put us well along the road to doing the other.

CROATIA ON THE OFFENSIVE: THE TRUE INTENTIONS OF THE REPUBLIC OF CROATIA FINALLY COME TO LIGHT

Mr. Speaker, the leadership of the Republic of Croatia has ordered the ethnic Serbians in Western Slavonia, who have lived there for hundreds of years, to abandon their homes and villages by today, and to take along only indispensable luggage.

On Monday of this week, Croatian forces attacked this area, burning and destroying 17 Serbian villages including Velika Barna, Mala Peratovica, Dapcevica, Dabcevacki Brdjani, Turcevic Polje, Loncarica, Mala Brana, Mala Jasenovaca, Velika Peratovica, Mali Grdjevac, Zrinjska, Sibenik, Cremusina, Brdjani, Rasenica, and Cadjevac.

During the night of November 3, almost 5,000 Serbian refugees reached Benja Luka, traveling via 270 tractors, 12 buses, and 7 trucks. The refugees told gruesome stories about the slaughter and the atrocities committed by Croatian troops.

In the region of Slavonska Pozega people from the villages of Gornji Vrhovci, Kantarevci, Poljanska, Odzakovci, Mrakovac Pozeski, Jezici, Vranici, Milivojevci, Podsrece, Snjegovic, Jeminovac, Vucjak, and Oblakovac were moved from their homes and taken to work camps.

In the larger area of the Serbian Autonomous Province of Western Slavonia, according to statements made by many refugees, the Croatian forces are carrying out an unseen genocide and terroristic activities. Croatian forces, much more numerous and better armed, continue to raid villages and slaughter all those who were not able to flee, destroying and burning everything in their path. Croatian formations attacked the village of Mikovicevo, and shelled the village of Veliki Bastaji with artillery.

On November 5, Croatian forces attacked Sid, a town within the Vojvodina province of Serbia, shelling it with artillery grenades. Four people were killed, and 13 were wounded.

The artillery grenades came from the direction of Nijemci and Lipovac, villages which are controlled by Croatian forces. The most densely populated areas of Sid were purposely targeted, and a kindergarten, silo, agricultural combine management building, chemical factory, medical center, and other vital objects were hit.

On November 6, Croatian artillery hit the villages of Aratin and Ilinci in the Republic of Serbia and the village of Bukovica in Bosnia.

Mr. Speaker, are these the actions of a republic that wants peace? I would say they demonstrate quite the contrary.

Where are the guarantees of autonomy given by Franjo Tudjman? Certainly not in any of the places I just mentioned. In fact, one of the main reasons for the current fighting is because Franjo Tudjman classified the Serbians within Croatia as a national minority, based on the tenets of his anti-Serbian platform when elected. This was a distinct change from the Serbians' previous classification as an ethnic equal within that republic.

Tudjman's regime also purged ethnic Serbians from government jobs, and others were forced to sign loyalty oaths in order to retain theirs.

Why are individuals of Serbian descent, who voluntarily live in Zagreb, still having to sign loyalty oaths in Mr. Tudjman's "democratic" republic?

While the world press is focused on the situations in Dubrovnik and Vukovar, why is there not as great an outcry for these families suffering under Croatian oppression, being forced out of their homes by official policy, being terrorized by ultra-nationalist troops out of government control? These are not Serbian "Guerillas," these are old people, women and children.

Where are the stories of the Serbian cultural monuments and Orthodox churches being destroyed by Croatian troops? Here's a list:

Village of Pakrac—Episcopal Court—completely burnt down; Cathedral of the Holy Trinity—extensive fire damage, Grevinice, the graveyard church—extensive fire damage.

Village of Okucani—church damaged.

Village of Donji Rajic—church damaged.

Village of Nedari—church damaged, priest's home destroyed.

Village of Nova Grediska—church bombed.

Village of Donji Bogicevci—church heavily damaged.

Village of Jesonovac—church belfry damaged.

Village of Daljani—church damaged.

Village of Roastovec—18th century wooden church burnt down.

Village of Donja Rasnice—18th century wooden church mined.

Village of Bjelovar—Cathedral of the Holy Trinity—belfry damaged by grenade.

Village of Volca—church bombed.

Village of Erdut—church destroyed by grenades.

Village of Drnis—church damaged.

Village of Grubisno Polj—church sealed shut by Croatian Police.

Village of Sisak—church damaged by explosives, priest's home broken into.

In fact, a delegation from the U.N. Educational, Scientific and Cultural Organization [UNESCO] just returned from a fact-finding mission in Croatia. UNESCO's director general, Federico Mayor said, and I quote, "Hundreds of churches, both Catholic and Orthodox, palaces, monuments, schools and libraries, often from the 17th, 18th and 19th centuries, have been destroyed or damaged beyond repair."

The Croatians do not mention the damage they have done when they make their appeals for help to the international community.

Where are the stories of the atrocities committed against Serbs? The Croatians would have you believe that this does not occur in their enlightened new state.

I read from a November 4 report from Tanjug regarding the refugees fleeing from eastern Slavonia:

Slobodan Kucuk of Virovitica told us: 'The Ustasha dug out the eyes of my neighbor Dusko Gleznic, cut off his ears, and then killed him. * * *

Leader of the Caravan Djuro Dobrojevic said he had seen a pregnant woman whose child was taken out of her womb while she was still alive. He added that the Ustashas had massacred many people, carving out their kidneys, hearts, livers with knives. * * *

"The Ustasha are setting fire to everything that can burn," Sava Skrgina of Gornja Kovacica confirmed, "They are killing and massacring everything that is Serbian. If we had not hastened to flee we would have been dead for sure," she said. * * *

A refugee said that, "In the municipality of Grubisno Polje at least 17 Serbian villages have been razed, and 40 Serbian villages have been abandoned. Those who did not manage to escape were brutally murdered. The Ustasha have really gone wild. They are shooting at every moving target. They are finishing off whoever they can with their special curved knives.

I have seen footage of these acts, Mr. Speaker, and I invite you, or any other Member of the House or Senate, to join me in my office to view the atrocities that have been commited against the Serbian minority in Croatia, against helpless women and children. After I start the tape, Mr. Speaker, I will step out of the room, in order that I not get ill.

Mr. Speaker, the basis for the current conflict is the human rights of the Serbian minority in Croatia, which were violated previous to, and continue to be violated after the outbreak of hostilities.

The Republic of Croatia, by word and deed, has done little for, and has in fact regressed on any attainable respect for the human rights of the Serbian minority in Croatia.

The world must be careful in its analysis of the current situation in Yugoslavia, and must be careful before it acts. I would like to read from an article entitled "Juggernaut of War Gains Speed in Yugoslavia" written by Timothy Kenny in Tuesday's USA TODAY:

[From the USA TODAY, Nov. 5, 1991]

JUGGERNAUT OF WAR GAINS SPEED IN YUGOSLAVIA

(By Timothy Kenny)

ZAGREB, YUGOSLAVIA.—The civil war pitting Serbia against Croatia has ended Yugoslavia's life as a nation.

But there is worse to come politically, militarily and emotionality for Serbs and Croats, as well as for others in the country's six republics.

European Community efforts to end the fighting with a peace plan that would allow the breakup of Yugoslavia come to a head today. The republics are being asked to sign the plan and stop fighting.

But Serbian leaders say they won't sign, and that could push impose economic sanctions.

"The only way to stop all this, as we see it, is that the agreement brokered by the EC should be signed by all parties who want to sign it," says Croatian Vice President Zdravko Tomac. "The state of Yugoslavia would, in effect, be abolished if four or five republics sign it. * * * If talks collapse, the war will spread. And then no one will be able to stop it."

The spread of war seems unstoppable now. Monday the federal army, dominated by Serbs, pounded the Croatian cities of Dubrovnik and Vukovar, including the start of "final operations" to take Vukovar.

More than 60 deaths have been reported since Saturday. Estimates of the death toll in fighting launched by the Serbled federal army since Croatia declared independence June 25 range from 2,500 to 5,000.

Croatian hatred of Serbia has hardened into a tough, unified shell, ending chances of even loose economic cooperation under independence.

Many of the 600,000 Serbs living in Croatia, fearful of abuses, say they don't want to live in an independent Croatia.

What lies ahead for the civil war and for Croatia remains clouded by uncertain politics and vague diplomacy. But behind the political rhetoric and bellicose words there is an unvarnished, naked fear. The conflict will only grow wider in the near term, spreading with a vengeance to the republic of Bosnia-Hercegovina to the south, because of that republic's ethnic diversity.

"If nothing is achieved by the U.N. or the EC in the next couple of days, the war will spread to Bosnia, and that will be tragic," Tomac says.

Already, the war is a political tragedy in Croatia, where President Franjo Tudjman's popularity has plummeted as Croatia buries its young men. The war also could mean parliament will demand an end to Tudjman's government when it meets Sunday. A coalition that stands even more strongly for independence would likely replace it, analysts say.

Many Croats would welcome that, including members of the Croatian Party of Rights, led by Dobroslav Paraga.

The Party of Rights, a pronationalist group that demands a "greater Croatia" advancing to near Belgrade, is rising in popularity as the war drags on.

Ignored six months ago as a fringe party, the group is now third in popularity in Zagreb, says an informal poll published in the newsmagazine Danas.

At the group's headquarters across from Zagreb's railway station, uniformed armed men pat visitors down twice and scan them with electronic equipment before allowing them to talk with Paraga.

The party has also outfitted and armed thousands of men—Paraga says 15,000, but there is no way to verify the claim—in uniforms and light arms. Money for the weapons, which Paraga says include shoulder-fired Stinger missiles and anti-tank arms, comes from abroad, mostly the United States and Canada.

The army of independently trained and armed men fights under direction of the Croatian National Guard. And while the government has outlawed such organizations, Paraga's group continues to flourish.

"The Croatian people realize that the Party of Rights is protecting the nation," says Paraga, a lawyer who was jailed three times for anti-communist activity beginning in 1980 and was forced to leave Croatia for three years. "They are turning to us more and more. As an occupied nation we want to use all means for an independent and sovereign Croatia."

Serbs, meanwhile, say Croatian terrorists are maiming and killing their people, but the atrocities get very little media coverage, compared with coverage of the federal army fighting in Croatia.

At a Serbian-American convention in Chicago last weekend, the hottest topic was Croatian terrorism and why the plight of Serbian refugees doesn't seem to be reported in the international media.

"We've been very frustrated," says Michel Djordjevich, president of the Serbian Unity Congress. "We have not broken through" to get sympathetic media coverage.

While one person attending showed a notebook of photos he said showed Croatian bias in the media, another showed pictures of mutilated bodies, purportedly the result of Croatian terrorists and mercenaries brutalizing Serbs.

"If my cousins get caught by Croatians, they will be mutilated," says Serbian-American Veljko Miljus. "It makes me want to go there and fight."

Mr. Speaker, there is a lot about the current situation in Yugoslavia that does not reach the ears of the readers of the western press or of our Congress. There is another side, a side of slaughter and mutilation, a side of blatant human rights abuses against the Serbian minority in Croatia.

Mr. Speaker, there is a saying that hindsight is 20/20. Let us at least strive to correct our vision to encompass the full scope of the situation in Yugoslavia before making pronouncements or assigning blame to one party or the other.

□ 1730

VACATING SPECIAL ORDER AND GRANTING SPECIAL ORDER

Mr. DORNAN of California. Mr. Speaker, I ask unanimous consent to vacate my request for a special order of 60 minutes and instead ask for a 5-minute special order.

The SPEAKER pro tempore (Mr. KOLTER). Is there objection to the request of the gentleman from California?

There was no objection.

NO $1 BILLION TO THE SOVIET UNION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 5 minutes.

Mr. DORNAN of California. Mr. Speaker, this Thursday has become a getaway Thursday. There are no votes tomorrow. Monday is a holiday for our great veterans. I always think of it as a special day for my father, who was in the trenches of Europe in Northern France on the 11th hour of the 11th day of the 11th month in 1918 when the armistice was signed for a war that was then just called the World War. There was no Roman numeral I after it, because nobody would ever have dreamed in just one generation that many of those same men, more advanced in years and rank, with their own sons at their sides, would be fighting yet another war in Europe started by the same country, this time not under a Kaiser who resigned in 1918, but by the same country with an ideology of fascism, the twin brother of the ideology of communism which has kept us building a Defense budget for 46 years, Mr. Speaker.

That is the reason I come to the well today. I could have easily taken an hour on what I am going to discuss, but maybe brevity is the soul of not only wit but power in trying to suggest to all American citizens, Mr. Speaker, and 1½ million watching the proceedings of this House, the camera rudely, notwithstanding, as it pans an empty Chamber, and as long as I have Congresswoman HELEN BENTLEY correcting her great remarks of the last 40 minutes I am happy that I have a great audience on the floor, Mr. Speaker; but the 1½ million Americans who electronically follow the proceedings of this House, they will be interested in what I have to say.

The conference on the Defense authorization bill, with the Senate conferees and the House conferees, is back in doubt. They will be meeting over this long weekend. There are still many issues in controversy, although the proabortion language was dropped, but those people that are part of the abortion cult in this country, including some of our Members, are back in there fighting to get abortion language put back in, knowing that the President is going to veto it hands down, to try to make abortions available in all of our tax-funded and supported military facilities around the world.

The big bone of contention now appears to be $1 billion. What did the great Senator Everett Dirksen say, "A billion here and a billion there pretty soon turns out to be real money." Fifty years ago yesterday President Franklin Roosevelt, on the eve of Pearl Harbor, and this is November 6, just a month and a day before we were struck at Pearl Harbor in a sneak attack, he put up $1 billion of lend lease aid to the Soviet Union, and not a minute too soon, because on the ninth of this month the Russian forces were encir-

cled around Lenigrad by the invading Hitler hordes, naziism fighting communism. On the east side of Leningrad they took the Tikhvin Rail Yard, the Tikhvin Railroad Junction, which completed the encirclement of Leningrad and began their 900 days of encirclement.

Now, what was Roosevelt proposing? One billion dollars in 1941, November 6, was real money because our entire budget for the whole Federal Government in 1941 was $13.7 billion, $13.7 billion. It grew in 1945 to $92.7 billion. You know what we gave out in human resources? Less than $2 billion, 1.9, and President Roosevelt put up $1 billion to save the Soviet Union and inadvertently saved communism, to be devilish for the next half a century.

Of that Defense budget in 1945, $92.7 billion, $83 billion was, for the year of 1945, the development of the nuclear bomb, our forces wrapping up the war in the Pacific and getting the Soviets, the Russian forces with us to accept the unconditional surrender of Germany on May 8, 1945.

□ 1740

A billion dollars was a lot of money then, so are we going to say here that a billion dollars is nothing today because we go into debt $1.1, maybe $1.2 billion every day, today, November 7?

Our great-grandchildren, some of these young people, Mr. Speaker, that visit us in the gallery, they are going to have to pay off debt at the rate of $1.2 billion a day. That is right, young man, today. Sorry, Mr. Speaker, he waved at me. I did not mean to make mention of that Cub Scout. I do not know him from Adam. That young Cub Scout, Cub Scouts across this country, Girl Scouts are going to have to pay off this debt; $365 billion this year, probably $400 billion. A billion dollars is a lot of money.

The $171 million is a lot of money to try and build more offices under the lawn out there in front. I am going up to the press gallery to talk to one of our networks about what a waste of money that is. Why? Because this Thanksgiving some families are not going to be able to buy a turkey. They are going to have to eat Spam. They are going to pay for it with food stamps; 23.5 million Americans are using food stamps to feed their families.

We are going to give $1 billion to the Soviet Union that we take out of operations and maintenance of our air forces? No; no. I will be circulating a Dear Colleague tomorrow, Mr. Speaker. I hope you will get on it.

We must not give any money to the Soviet Union and pour it down a bottomless hole. We must give them assistance with food, how to grow, how to fish, how to plant, and then we teach them how to feed themselves, not putting $1 billion down this bottomless pit.

Mr. Speaker, I submit for the RECORD my press release of today, the 74th anniversary of the tragic Bolshevik resolution in St. Petersburg in 1917. It is about this $1 billion defense bill conference idea, a bad idea. My Dear Colleague appeal will be substantially the same.

DORNAN SEEKS DEBATE ON SOVIET AID PROPOSAL

WASHINGTON, DC.—In an effort to derail a proposal granting massive U.S. aid to the Soviets, U.S. Rep. Robert K. Dornan (R-CA) hopes to open the issue for congressional debate.

"While we believe any U.S. aid must be directly tied to meaningful change of the Soviet military and Soviet foreign policy, the American public deserves at least a fair and open debate in the House on this specific provision," Dornan wrote Thursday to U.S. Rep. Joe Moakley (D-MA), chairman of the House Committee on Rules. The letter was cosigned by other congressmen.

The aid proposal, which would allow President Bush to transfer up to $1 billion in defense funds to the Soviet Union for humanitarian assistance, is contained in the Defense Authorization Act for fiscal year 1992. The legislation now awaits final congressional approval after a conference committee last week rectified differences between the House and Senate versions.

However, there appears to be growing resistance on Capitol Hill to providing such a large amount of unrestricted Soviet aid.

"It would be somewhat unseemly to take funding from our defense budget and pass it out to a government that still has literally thousands of missiles pointed at the United States," said Dornan. "Has any Member of Congress ever been approached by a taxpayer who suggested we give any peace dividend to the former 'evil empire' that caused 46 years of U.S. defense spending? No."

"During a time when the Defense Department is adapting to the changing world environment, our military shouldn't be forced to be in the business of handing out foreign aid. More importantly, the American taxpayer simply can't afford it, and to suggest we take from this billion from operations and maintenance accounts is bizarre. Should our pilots fly less just so Gorbachev can free up money for their pilots to accumulate more flight training hours? That's insane.

Dornan, a member of the House Armed Services Committee, believes the Soviet aid provision should be debated in Congress before the vote on the Pentagon spending bill.

"Neither the House nor the Senate defense bills even mentioned the prospect of Soviet humanitarian aid and for very good reason," continued Dornan. "In addition to changing their foreign policy, the Soviets must reform their economy. It's as simple as this—if you give a man a fish, he'll eat for a day. If you teach a man to fish, he'll eat forever. Soviet aid with no strings attached and no incentives to move toward a market economy will be like pouring money down a bottomless hole."

THE CHILD CARE COUNCIL: WORKING FOR WESTCHESTER

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York [Mrs. LOWEY] is recognized for 10 minutes.

Mrs. LOWEY of New York. Mr. Speaker, many of us in this House have made child care a priority. We have devoted long hours to developing policies intended to assist America's working families in obtaining the sense of security that affordable quality child care can provide.

I rise today to remind my colleagues that we are not alone. There are countless hard-working individuals across the country who share our commitment to improving and expanding child care services and who give of themselves day in and day out to address the challenges inherent in meeting these needs. Two such individuals are my good friends, Sally Ziegler and Joe Ungaro, who have provided strong leadership to a remarkable organization, the Child Care Council of Westchester.

The Child Care Council is an organization which has been providing a tremendous service for more than 20 years. Since its beginning, the council has provided training for day care workers and support for the centers which employ them. Over the years, its mission has grown to include many additional functions. It served as a training center under the Federal Comprehensive Education and Training Act Program in the years before that program was canceled by the Reagan administration. Since 1984, it has served as a locus of information, training, technical assistance, and advocacy for child care throughout Westchester County. It operates a referral and resource system for employers and parents. Wherever there is a need for action to ensure that quality child care is available for Westchester parents and children, the Child Care Council is there.

One of those who has played a leading role in the expansion of the council's work has been Joe Ungaro. In 1982, while serving as president and publisher of the Gannett Westchester Rockland Newspapers, he secured a Gannett Foundation grant for the Westchester United Way to study child care needs in our area. The results of that study led to the reorganization and expansion of the Child Care Council, which Joe went on to serve as board chairman for several years. Throughout his distinguished career in journalism, he has displayed a high degree of caring and concern for the needs of children through involvement in a wide range of community activities including his service to the Child Care Council.

Directing the council's efforts today is a talented and tireless woman, Sally Ziegler. With a firm hand and an eye on the future, she has continually guided the council in the right direction. A mother of three and grandmother of one, she knows the importance of family and understands first hand the need for quality day care services. She is also actively involved in a variety of other community activities. Her public service with such organizations as the Westchester Early Childhood Directors Association, the Westchester Task Force on Child Abuse and Neglect, the Westchester Children's Association, the Westchester Coalition, and the advisory council to the Westchester Commissioner of Social Services has been widely noted. In 1986, she was named Westchester Woman of the Year, an honor she richly deserved.

The Child Care Council of Westchester is a model that should be followed in communities across this country, Mr. Speaker. Thanks to people like Joe Ungaro and Sally Ziegler, the

council makes a substantial contribution to the business community, to working parents, and most importantly, to the children whom it serves.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. SANGMEISTER (at the request of Mr. GEPHARDT) for Monday, November 4, after 5 p.m. and for the balance of the week on account of medical reasons.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. NICHOLS) to revise and extend their remarks and include extraneous material:)

Mr. LIVINGSTON, for 60 minutes, today and on November 12.

Mr. RIGGS, for 60 minutes, today.

(The following Members (at the request of Mr. MCNULTY) to revise and extend their remarks and include extraneous material:)

Mr. ROSTENKOWSKI, for 5 minutes, today.

Mr. BOUCHER, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mrs. LOWEY of New York, for 10 minutes, today.

Mr. MORAN, for 5 minutes, today.

Mr. JONTZ, for 60 minutes each day, on November 18 and 19.

Mr. LIPINSKI, for 5 minutes each day, on November 12, 19, and 26.

Mr. WISE, for 60 minutes, on November 8.

Mr. MCCLOSKEY, for 60 minutes, on November 12.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. NICHOLS) and to include extraneous matter:)

Mr. LEWIS of California in three instances.

Mr. MCDADE.

Mr. GRADISON.

Mr. HORTON.

Ms. ROS-LEHTINEN in six instances.

Ms. MOLINARI in two instances.

Mr. GEKAS.

Mrs. VUCANOVICH.

Mr. WALSH.

Mr. RHODES.

Mr. GALLEGLY in two instances.

Mrs. ROUKEMA.

Mr. DORNAN of California.

Mr. DANNEMEYER in two instances.

Mr. MYERS of Indiana.

Mr. MACHTLEY.

Mrs. BENTLEY in two instances.

(The following Members (at the request of Mr. MCNULTY) and to include extraneous matter:)

Mr. BROWN.

Mr. KANJORKSI.

Mr. MAZZOLI.

Mr. LEVINE of California.

Mr. DORGAN of North Dakota.

Mr. REED in two instances.

Mr. MATSUI.

Mr. DWYER of New Jersey.

Mr. HOCHBRUECKNER.

Mr. VISCLOSKY.

Mr. ERDREICH.

Mr. DARDEN.

Mr. ROE.

Mr. RICHARDSON.

ENROLLED JOINT RESOLUTIONS SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a Joint Resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 175. Joint resolution to designate the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week".

SENATE ENROLLED JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to enrolled joint resolutions of the Senate of the following titles:

S.J. Res. 188. Joint resolution designating November 1991 as "National Red Ribbon Month";

S.J. Res. 36. Joint resolution to designate the months of November 1991, and November 1992, as "National Alzheimer's Disease Month"; and

S.J. Res. 145. Joint resolution designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week."

ADJOURNMENT

Mr. DORNAN of California. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 43 minutes p.m.), the House adjourned until tomorrow, Friday, November 8, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2320. A letter from the Secretary of Education transmitting a copy of Final Regulations—Program for Children and Youth with Serious Emotional Disturbance, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

2321. A letter from the Secretary of Education transmitting a notice of Final Priority—Bilingual Education: Training Development and Improvement Program, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

2322. A letter from the Secretary, Department of Energy, transmitting the report for fiscal year 1990 on Federal Government Energy Management and Conservation Programs, pursuant to Public Law 100-615, section 2(a) (102 Stat. 3188); to the Committee on Energy and Commerce.

2323. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notice that the Department of Defense is providing up to $10 million in commodities and services to the Government of Senegal to support its deployment as part of the Economic Organization of West African States [Ecowas] peacekeeping operation in Liberia [Ecomog]; to the Committee on Foreign Affairs.

2324. A letter from the Chairman, Administrative Conference of the United States, transmitting the Conference's fiscal year 1991 Inspector General Annual Report status in compliance with the Inspector General Act Amendments of 1988; to the Committee on Government Operations.

2325. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting the report required by the Inspector General Act Amendments of 1988; to the Committee on Government Operations.

2326. A letter from the Chief of Staff, Office of U.S. Nuclear Waste Negotiator, transmitting the Office's annual report on audit and investigative coverage; to the Committee on Government Operations.

2327. A letter from the Director, Selective Service System, transmitting the report on actions taken by the Selective Service System to comply with the requirements of the Inspector General Act Amendments of 1988; to the Committee on Government Operations.

2328. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2329. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2330. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2331. A letter from the Secretary of the Interior transmitting the Oil and Gas Leasing Program for Non-North Slope Federal Lands in Alaska, Annual Report Fiscal Year 1990, pursuant to 16 U.S.C. 3148; to the Committee on Interior and Insular Affairs.

2332. A letter from the Deputy Administrator, General Services Administration, transmitting an informational copy of a lease prospectus, pursuant to 40 U.S.C. 606(a); to the Committee on Public Works and Transportation.

2333. A letter from the Department of Health and Human Services transmitting the 15th annual report on the Child Support Enforcement Program for the period ending September 30, 1990, pursuant to 42 U.S.C.

652(a)(10); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 2722. A bill to revise and extend the programs under the Abandoned Infants Assistance Act of 1988; with an amendment (Rept. 102-209, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. GONZALEZ: Committee on Banking, Finance and Urban Affairs. H.R. 2094. A bill to require the least-cost resolution of insured depository institutions, to improve supervision and examinations, to provide additional resources to the Bank Insurance Fund, and for other purposes; with an amendment (Rept. 102-293). Referred to the Committee of the Whole House on the State of the Union.

Mr. FORD of Michigan: Committee on Education and Labor. H.R. 3320. A bill to improve education for all students by restructing the education system in the States; with an amendment (Rept. 102-294). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CRANE (for himself, Mr. MOORHEAD, Mr. GREEN of New York, Mr. RANGEL, Mr. HANCOCK, Mr. HUGHES, Mr. OXLEY, and Mr. LAFALCE):

H.R. 3728. A bill to provide for a 6-month extension of the Commission on the Bicentennial of the Constitution; to the Committee on Post Office and Civil Service.

By Mr. BARTON of Texas:

H.R. 3729. A bill for the relief of the Rockett Special Utility District; to the Committee on Agriculture.

By Mr. ROSTENKOWSKI (for himself, Mr. GEPHARDT, Mr. PEASE, Mr. DOWNEY, Mr. RANGEL, Mr. MATSUI, Mr. ANTHONY, Mr. DORGAN of North Dakota, Mr. DONNELLY, Mr. COYNE, Mr. LEVIN of Michigan, Mr. CARDIN, Mr. MCDERMOTT, Mr. HOYER, Mr. FAZIO, Mr. MAZZOLI, Mr. OBEY, Mr. HOCHBRUECKNER, Mr. MCNULTY, and Mrs. UNSOELD):

H.R. 3730. A bill to amend the Internal Revenue Code of 1986 to provide a credit for a portion of the employees' share of Social Security taxes, and for other purposes; to the Committee on Ways and Means.

By Mr. BARTON of Texas (for himself and Mr. WILSON):

H.R. 3731. A bill to provide certain rules governing the treatment of a 5.421-acre parcel of land donated by the Resolution Trust Corporation to the city of Navasota, TX; to the Committee on Banking, Finance and Urban Affairs.

By Mr. CONYERS (for himself, Mr. KLECZKA, Mr. WAXMAN, Mr. OWENS of New York, Mr. SANDERS, Mrs. BOXER, Mr. SYNAR, Mr. THORNTON, Mr. BUSTAMANTE, Mr. MARTINEZ, Mr. ENGLISH, Mr. TOWNS, Mr. PAYNE of New Jersey, and Ms. DELAURO):

H.R. 3732. A bill to amend the Congressional Budget Act of 1974 to eliminate the division of discretionary appropriations into three categories for purposes of a discretionary spending limit for fiscal year 1993, and for other purposes; jointly, to the Committees on Government Operations and Rules.

By Mr. COUGHLIN:

H.R. 3733. A bill to amend the Federal Election Campaign Act of 1971 and the Internal Revenue Code of 1986 to reduce the role of special interest campaign money, prohibit soft money contributions, and create alternative campaign resources; jointly, to the Committees on House Administration and Ways and Means.

By Mr. DANNEMEYER (for himself, Mr. SHAYS, Mr. RAMSTAD, Mr. HAYES of Louisiana, Mr. THOMAS of Wyoming, Mr. BALLENGER, Mr. WALSH, Mr. MILLER of Washington, Mr. COMBEST, Mr. ZIMMER, Mr. SMITH of Texas, Mr. KLUG, Mr. BAKER, Mr. DICKINSON, Mr. SANTORUM, Mr. LIGHTFOOT, Mr. EWING, Mr. WOLF, Mr. ALLARD, Mr. DOOLITTLE, Mr. PORTER, Mr. HUNTER, Mr. PACKARD, Mr. ROHRABACHER, Mr. LIVINGSTON, Mr. HOLLOWAY, Mr. YOUNG of Florida, and Mr. DUNCAN):

H.R. 3734. A bill to make applicable to the Congress certain laws relating to the terms and conditions of employment, the health and safety of employees, and the rights and responsibilities of employers and employees, and for other purpose; jointly, to the Committees on House Administration, Education and Labor, the Judiciary, Government Operations, Ways and Means, and Rules.

By Mr. DREIER of California (for himself and Mr. GORDON):

H.R. 3735. A bill to establish guidelines and goals for U.S. assistance to Central and Eastern Europe, to provide certain tax incentives for U.S. business investment in the region, to privatize the Eastern European Business Information Management System, to expand U.S. private sector initiatives for the region, and to coordinate and streamline U.S. Government programs for Central and Eastern European countries; jointly, to the Committees on Ways and Means, Foreign Affairs, and Small Business.

By Mr. DEFAZIO:

H.R. 3736. A bill to repeal the $2 copayment requirement for medication furnished certain veterans on an outpatient basis; to the Committee on Veterans' Affairs.

By Mr. HOCHBRUECKNER:

H.R. 3737. A bill to amend title 38, United States Code, to provide that amounts received by veteran in a legal settlement with the Department of Veterans Affairs for injuries arising from the negligence of the Department shall be excluded from determinations with respect to annual income for purposes of programs administered by the Secretary of Veterans Affairs that are income based; to the Committee on Veterans' Affairs.

By Mr. HYDE (for himself, Mr. MICHEL, Mr. GINGRICH, Mr. SOLOMON, Mr. GOODLING, Mr. PACKARD, and Mr. LEWIS of California):

H.R. 3738. A bill to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes; jointly, to the Committees on the Judiciary, Education and Labor, and Rules.

By Mrs. JOHNSON of Connecticut:

H.R. 3739. A bill to amend the Internal Revenue Code of 1986 to allow a credit for the purchase of a principal residence by a first-time homebuyer; to the Committee on Ways and Means.

By Mr. MARLENEE:

H.R. 3740. A bill to restore reductions in veterans' benefits made by the Omnibus Budget Reconciliation Act of 1990, to modify the final allowances for veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MATSUI (for himself, Mr. MOODY, Mr. GRADISON, Mr. MARKEY, Mr. HOAGLAND, Mr. PICKLE, Mr. VANDER JAGT, Mr. GUARINI, Mr. MCGRATH, Mr. ANTHONY, Mr. CHANDLER, Mr. ANDREWS of Texas, Mrs. JOHNSON of Connecticut, Mr. BUNNING, Mr. BACCHUS, Mr. BOEHNER, Mr. BUSTAMANTE, Mrs. BYRON, Mr. CAMPBELL of California, Mr. CRAMER, Mr. FEIGHAN, Mr. FISH, Ms. HORN, Mr. HORTON, Mr. IRELAND, Mr. KLUG, Mr. KOLBE, Mr. KOSTMAYER, Mr. LAFALCE, Mr. LANCASTER, Mr. MINETA, Mr. OWENS of Utah, Mr. RHODES, Mr. RIGGS, Mr. SENSENBRENNER, Mr. SPRATT, Mr. WILSON, Mr. ZELIFF, Mr. LEVINE of California, and Mr. CUNNINGHAM):

H.R. 3741. A bill to amend the Internal Revenue Code of 1986 to provide a capital gains tax differential for individual and corporate taxpayers who make high-risk, long-term, growth-oriented venture and seed capital investments in startup and other small enterprises; to the Committee on Ways and Means.

By Mr. ROSE (for himself and Mr. DE LA GARZA):

H.R. 3742. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to improve the safety of pesticides, and for other purposes; jointly, to the Committees on Agriculture and Energy and Commerce.

By Mr. TRAFICANT:

H.R. 3743. A bill to amend the Internal Revenue Code of 1986 to require an investigation of Internal Revenue Service abuse of taxpayers' rights, to safeguard taxpayer rights, to monitor the effectiveness of the Internal Revenue Service's program for the prevention of taxpayer abuse, and for other purposes; to the Committee on Ways and Means.

By Mr. WEBER (for himself, Mr. DELAY, Mr. WOLF, Mr. ARMEY, Mr. RAMSTAD, Mr. SMITH of Texas, Mr. DOOLITTLE, Mr. PACKARD, Mr. MCEWEN, Mr. SANTORUM, Mr. ZIMMER, Mr. COX of California, Mr. WALKER, Mr. ROHRABACHER, Mr. BOEHNER, Mr. KYL, Mr. IRELAND, Mr. BROOMFIELD, Mr. DICKINSON, Mr. CUNNINGHAM, Mr. BARRETT, Mr. SKEEN, Mr. RIGGS, Mr. TALLON, Mr. PAXON, Mr. RAVENEL, Mr. SENSENBRENNER, Mr. THOMAS of Wyoming, Mr. WALSH, Mr. SOLOMON, and Mr. CAMP):

H.R. 3744. A bill to amend the Internal Revenue Code of 1986 to provide income tax relief for families and to provide tax incentives for economic growth; jointly, to the Committees on Ways and Means, Banking, Finance and Urban Affairs, and the Judiciary.

By Mr. CHANDLER:

H.J. Res. 370. Joint resolution designating March 25 of each year as "National Medal of Honor Day"; to the Committee on Post Office and Civil Service.

By Mr. MYERS of Indiana (for himself, Mr. BEREUTER, Mr. BEVILL, Mr. BLILEY, Mr. BROOMFIELD, Mr. BURTON of Indiana, Mr. CHANDLER, Mr. FIELDS, Mr. GILCHREST, Mr. GILMAN, Mr. HAMILTON, Mr. INHOFE, Ms. LONG, Mr.

McCLOSKEY, Mr. MCGRATH, Mr. MCMILLEN of Maryland, Ms. NORTON, Mr. OBERSTAR, Mr. PETRI, Mr. RAMSTAD, Mr. RAY, Mr. RITTER, Mr. SHARP, Mr. SISISKY, Mr. SKEEN, Mr. SLATTERY, Mr. SPENCE, Mr. STUMP, and Mr. YATRON):

H.J. Res. 371. Joint resolution designating May 31-June 6, 1992, as a "Week for the National Observance of the 50th Anniversary of World War II"; to the Committee on Post Office and Civil Service.

By Mr. NEAL of Massachusetts:

H.J. Res. 372. Joint resolution designating December 21, 1991, as "Basketball Centennial Day"; to the Committee on Post Office and Civil Service.

By Mr. SANGMEISTER:

H.J. Res. 373. Joint resolution to designate the week of November 10 through 17, 1991 as "Joliet Junior College 90th Anniversary Week"; to the Committee on Post Office and Civil Service.

By Mr. CAMP (for himself, Mr. UPTON, Mr. GOSS, Mr. MILLER of Washington, and Mr. DORNAN of California):

H. Con. Res. 233. Concurrent resolution calling upon the President of the United States not to proceed toward the normalization of diplomatic and economic relations with the Socialist Republic of Vietnam until the United States Senate Select Committee on POW/MIA Affairs has reported its findings on the accounting of missing American servicemen in Southeast Asia; to the Committee on Foreign Affairs.

By Mr. DYMALLY (for himself, Mr. BURTON of Indiana, Mr. YATRON, and Mr. PAYNE of New Jersey):

H. Con. Res. 234. Concurrent resolution expressing the sense of the Congress concerning humanitarian assistance for the people in Sudan; to the Committee on Foreign Affairs.

By Mr. LEVINE of California (for himself, Mr. OWENS of Utah, Mr. LEHMAN of California, Mr. BROOMFIELD, Mr. SENSENBRENNER, Mr. MCNULTY, Mr. ANNUNZIO, Mr. APPLEGATE, Mr. GALLO, Mr. LIPINSKI, Ms. PELOSI, Mr. RITTER, Mr. LOWERY of California, Mr. SCHEUER, Mr. PALLONE, Mr. MOORHEAD, Mr. DREIER of California, Mr. DOOLEY, Mr. LANTOS, Mr. FRANK of Massachusetts, Mrs. UNSOELD, Mr. GUARINI, Mr. TORRES, Mr. WALSH, Mrs. MEYERS of Kansas, Mr. TORRICELLI, Mr. DE LUGO, Mr. TRAFICANT, Mr. MACHTLEY, Mr. HUGHES, Mr. FAWELL, Mr. CARDIN, Mr. ACKERMAN, and Mr. SWETT):

H. Con. Res. 235. Concurrent resolution congratulating the President and the people of Armenia for their democratic elections and urging the President of the United States to recognize Armenia's declaration of independence and to extend full diplomatic recognition to the Republic of Armenia; to the Committee on Foreign Affairs.

By Mrs. VUCANOVICH (for herself and Mr. BILBRAY):

H. Con. Res. 236. Concurrent resolution expressing the sense of the Congress that the President should award the Presidential Unit Citation to the crew of the U.S.S. *Nevada* for their heroism and gallantry during the attack on Pearl Harbor on December 7, 1941; to the Committee on Armed Services.

By Mr. HORTON:

H. Res. 272. Resolution calling on the film industry to continue to develop technologies that make films more accessible to the hearing-impaired; to the Committee on Energy and Commerce.

By Mr. KYL (for himself, Mr. BALLENGER, Mr. BURTON of Indiana, Mr. IRELAND, and Mr. THOMAS of Wyoming):

H. Res. 273. Resolution to amend the Rules of the House of Representatives to limit the length of service on any standing committee of the House; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

314. By the SPEAKER: Memorial of the Legislature of the State of California, relative to outdoor advertising; to the Committee on Public Works and Transportation.

315. Also, memorial of the Legislature of the State of California, relative to Federal Supplemental Security Income Program benefits; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 155: Mr. GINGRICH.

H.R. 213: Ms. NORTON.

H.R. 467: Mr. KYL and Mr. SENSENBRENNER.

H.R. 701: Mr. LEHMAN of California, Mr. LEWIS of California, Mr. GALLEGLY, and Mr. DORNAN of California.

H.R. 742: Mr. GINGRICH.

H.R. 786: Mr. JONTZ and Mr. CONYERS.

H.R. 811: Mr. SWETT.

H.R. 967: Mr. MARKEY.

H.R. 1108: Mr. GINGRICH.

H.R. 1163: Mr. KLUG.

H.R. 1218: Mr. OLVER and Mr. PASTOR.

H.R. 1237: Mr. WALSH.

H.R. 1240: Mr. POSHARD.

H.R. 1251: Mr. ANDREWS of Maine, Ms. KAPTUR, Mr. ESPY, Mr. JEFFERSON, and Mr. SCHIFF.

H.R. 1252: Mr. ANDREWS of Maine, Ms. KAPTUR, Mr. ESPY, and Mr. JEFFERSON.

H.R. 1253: Ms. KAPTUR, Mr. ESPY, Mr. JEFFERSON, Mr. SCHIFF, and Mr. ANDREWS of Maine.

H.R. 1259: Mr. ANDREWS of Maine and Mr. LANTOS.

H.R. 1335: Mr. DYMALLY and Mrs. MORELLA.

H.R. 1366: Mr. PERKINS, Mr. MARTIN, Ms. NORTON, Mr. JOHNSON of South Dakota, Ms. KAPTUR, Mr. MFUME, Mr. DEFAZIO, Mr. FROST, Ms. DELAURO, Mr. EVANS, and Mr. PETERSON of Minnesota.

H.R. 1414: Mr. HOYER.

H.R. 1483: Mr. VALENTINE.

H.R. 1516: Mr. EVANS and Mr. VOLKMER.

H.R. 1541: Ms. SNOWE.

H.R. 1744: Mr. TORRICELLI.

H.R. 1751: Mr. LIGHTFOOT.

H.R. 1774: Mr. CONYERS.

H.R. 2070: Mr. HANCOCK, Mr. BATEMAN, and Mr. WOLF.

H.R. 2083: Mr. MARKEY and Mr. WAXMAN.

H.R. 2089: Mr. YATES and Mrs. BOXER.

H.R. 2248: Mr. DEFAZIO, Mr. OLVER, Mrs. BOXER, and Mr. LOWERY of California.

H.R. 2401: Mr. UPTON.

H.R. 2485: Mr. DEFAZIO, Mr. LIPINSKI, Mr. PEASE, and Mr. DURBIN.

H.R. 2510: Mr. DOOLITTLE.

H.R. 2598: Mr. SPENCE and Ms. MOLINARI.

H.R. 2643: Mr. BARTON of Texas and Mr. OXLEY.

H.R. 2766: Mr. GINGRICH, Mr. DARDEN, Mr. ZIMMER, and Mr. GUNDERSON.

H.R. 2768: Mr. OWENS of Utah.

H.R. 2776: Mr. MCCOLLUM and Mr. ROE.

H.R. 2855: Mr. EVANS.

H.R. 2890: Mr. ALEXANDER, Mr. GINGRICH, Mrs. SCHROEDER, and Mr. WYLIE.

H.R. 2936: Mr. HAYES of Illinois, Ms. HORN, Mr. HUGHES, Mr. KOLTER, Mr. LAFALCE, and Mr. MARKEY.

H.R. 2966: Mr. MICHEL, Mr. JONES of North Carolina, Mr. RAVENEL, Mr. GILLMOR, Mr. ROTH, Mr. BOUCHER, and Mr. ANDREWS of New Jersey.

H.R. 2970: Mr. TOWNS, Mr. MCDERMOTT, Ms. KAPTUR, Mr. HORTON, Mr. MARTINEZ, Mrs. COLLINS of Illinois, Mr. MFUME, Mr. FORD of Tennessee, Mr. DYMALLY, Mr. ESPY, Mr. RANGEL, Ms. PELOSI, Ms. NORTON, Mr. DELLUMS, Mr. CLAY, Mr. FOGLIETTA, Mrs. BOXER, Mr. FAZIO, Mr. TORRES, Mr. SANDERS, Mr. FROST, Mr. HAYES of Illinois, Mr. OWENS of New York, Mr. STOKES, Mr. PAYNE of New Jersey, Mr. STARK, Mr. FLAKE, Ms. WATERS, Mr. ROYBAL, Mr. JEFFERSON, Mr. DE LUGO, Mr. BERMAN, Mr. WHEAT, Mr. LEHMAN of Florida, Mr. CONYERS, Mr. FISH, and Mr. FRANK of Massachusetts.

H.R. 3071: Mr. DORNAN of California, Mr. ENGLISH, Mrs. ROUKEMA, and Mr. UPTON.

H.R. 3120: Mr. ENGEL.

H.R. 3160: Mr. ABERCROMBIE, Mr. ANDREWS of New Jersey, Mr. ANDREWS of Maine, Mr. AUCOIN, Mrs. BOXER, Mr. BROWN, Mr. COLEMAN of Texas, Mr. COSTELLO, Mr. DICKS, Mr. DOWNEY, Mr. DYMALLY, Mr. FAZIO, Mr. FOGLIETTA, Mr. FROST, Mr. GONZALEZ, Mr. HOCHBRUECKNER, Ms. KAPTUR, Mr. LEVINE of California, Mr. PALLONE, Mr. PETERSON of Minnesota, and Mr. POSHARD.

H.R. 3171: Mr. FROST, Ms. KAPTUR, Mr. DWYER of New Jersey, and Ms. NORTON.

H.R. 3185: Mr. RAY, Mr. HATCHER, and Mr. JENKINS.

H.R. 3193: Mr. RAMSTAD.

H.R. 3320: Mr. MILLER of California, Mr. GUNDERSON, Mr. MARTINEZ, Mr. BARRETT, Mr. DE LUGO, Mr. OLVER, Mr. LEVINE of California, and Mr. RAHALL.

H.R. 3359: Mr. CAMPBELL of Colorado.

H.R. 3360: Mr. WELDON.

H.R. 3464: Mr. OLVER, Mr. DUNCAN, Mrs. COLLINS of Illinois, Mr. IRELAND, Mr. INHOFE, Mr. MFUME, Mr. MARTINEZ, Mr. FIELDS, and Mr. PETERSON of Florida.

H.R. 3475: Mr. FISH and Mr. DE LUGO.

H.R. 3476: Mr. MINETA and Mr. MORAN.

H.R. 3493: Mr. PAXON, Mr. HANCOCK, Mr. SWIFT, Mr. COX of California, Ms. ROS-LEHTINEN, Mr. MACHTLEY, Mr. DUNCAN, Mr. HASTERT, Mr. LAGOMARSINO, Mr. HORTON, and Mr. MCNULTY.

H.R. 3509: Mr. HORTON, Mr. KOLTER, Mr. OBERSTAR, Ms. KAPTUR, Mr. SABO, Mr. SPRATT, Mr. ACKERMAN, Mr. HUGHES, Mr. PETERSON of Minnesota, Mr. DWYER of New Jersey, Mr. KOSTMAYER, Mr. MORAN, Mr. SIKORSKI, Mr. OWENS of Utah, and Mr. SCHEUER.

H.R. 3511: Mr. TRAFICANT and Mr. LEWIS of Georgia.

H.R. 3528: Mrs. UNSOELD, Mr. LANCASTER, Mr. JOHNSON of South Dakota, and Mr. BLAZ.

H.R. 3552: Mr. BUSTAMANTE, Mr. ABERCROMBIE, Mr. CONDIT, Mr. FRANK of Massachusetts, Mr. LAGOMARSINO, Mrs. SCHROEDER, Mr. SABO, Mr. TOWNS, and Mr. BLAZ.

H.R. 3553: Ms. NORTON, Mr. PORTER, and Mr. TORRES.

H.R. 3554: Mr. SIKORSKI, Mr. YATES, and Mr. MFUME.

H.R. 3578: Mr. MCCLOSKEY, Mr. GIBBONS, Mr. RAVENEL, Mr. BILBRAY, Mr. FORD of Tennessee, Mr. FRANK of Massachusetts, Mr. NAGLE, Mr. OBEY, Mr. SKAGGS, Mrs. BOXER, Mr. EVANS, and Mr. SABO.

H.R. 3630: Mr. EWING, Mr. RIGGS, Mr. GALLEGLY, Mr. GOSS, and Mr. MCCANDLESS.

H.R. 3645: Mr. ROTH, Mr. TALLON, and Mr. SYNAR.

H.R. 3649: Mr. JOHNSON of South Dakota and Mr. DELLUMS.

H.R. 3669: Mr. FUSTER.

H.J. Res. 201: Mr. SISISKY and Mr. HOAGLAND.

H.J. Res. 212: Mr. CARDIN, Mr. NAGLE, Mr. COSTELLO, Mr. MATSUI, Mr. SABO, Mr. WOLPE, Mr. GUNDERSON, Mr. JACOBS, and Mr. HENRY.

H.J. Res. 291: Mr. ORTIZ, Ms. PELOSI, Mr. PRICE, Mr. AUCOIN, Mr. BARNARD, Mr. HALL of Ohio, Mr. LEHMAN of Florida, Mr. ACKERMAN, Mr. MCDADE, Mr. DAVIS, Mr. PASTOR, Mr. HERTEL, Mr. HENRY, Mr. HOCHBRUECKNER, Mr. GALLO, Mr. DOWNEY, Mr. DEFAZIO, Mr. YOUNG of Alaska, Mr. NAGLE, Mr. BALLENGER, Mr. JACOBS, Mr. MORRISON, Mr. FOGLIETTA, Mr. KOSTMAYER, Mr. SAVAGE, Mr. HASTERT, Mr. APPLEGATE, Mr. RITTER, Mr. GOODLING, Mr. WHITTEN, Mr. RICHARDSON, Mr. CHAPMAN, Mr. CALLAHAN, Mr. HAMMERSCHMIDT, and Mr. MCMILLEN of Maryland.

H.J. Res. 300: Mrs. COLLINS of Illinois, Mr. BLILEY, Mr. ROTH, Mr. SISISKY, Mr. HAYES of Louisiana, Mr. OBERSTAR, Mr. PANETTA, Mr. ORTIZ, Mr. VISCLOSKY, Mr. ANDREWS of New Jersey, Mr. FAWELL, Mrs. MINK, Mr. WALSH, Mr. LEVINE of California, Mr. GIBBONS, Mr. CHANDLER, Mr. COBLE, Mr. GILCHREST, Mr. MARTIN, Mr. BRUCE, Mr. SMITH of New Jersey, Mr. STEARNS, Mr. RIGGS, Mr. RINALDO, Mr. GUNDERSON, Mr. WASHINGTON, Mr. ROSE, Mr. HUNTER, Mr. HALL of Ohio, Mr. STALLINGS, Mr. ABERCROMBIE, Mr. ROBERTS, and Mr. DORNAN of California.

H.J. Res. 302: Mr. BEILENSON.

H.J. Res. 326: Mr. DE LA GARZA, Mr. EMERSON, Mr. YATRON, Mr. GEKAS, Mr. SUNDQUIST, Mr. GILCHREST, Ms. HORN, Mr. CARR, Mr. SHAYS, Mr. PANETTA, Mr. NEAL of North Carolina, and Mr. MILLER of California.

H.J. Res. 356: Mr. DANNEMEYER, Mr. HOBSON, Mr. SABO, Mr. BATEMAN, Mrs. MEYERS of Kansas, Mr. SAXTON, Mr. MOORHEAD, Mr. BENNETT, Mr. AUCOIN, Mr. MURPHY, Mr. DEFAZIO, Mr. KOLTER, Mrs. KENNELLY, and Mr. SCHEUER.

H.J. Res. 361: Mr. MAVROULES, Mr. MCNULTY, Mr. RANGEL, Mr. VENTO, Mr. HUGHES, Mr. APPLEGATE, Mr. HORTON, Ms. KAPTUR, Mr. WEBER, Mr. TOWNS, Mr. HERTEL, Mr. TRAXLER, Mr. PURSELL, Mr. BROOMFIELD, and Mr. CONYERS.

H. Con. Res. 89: Mr. ANDREWS of Maine, Ms. KAPTUR, Mr. ESPY, and Mr. JEFFERSON.

H. Con. Res. 188: Ms. NORTON, Mr. BRUCE, and Ms. HORN.

H. Con. Res. 192: Ms. KAPTUR, Mr. BEREUTER, Mr. ALLARD, Mr. SWIFT, Mr. FIELDS, Mr. GILCHREST, Mr. THOMAS of Georgia, Mr. MARTIN, Mr. UPTON, Mr. MCCOLLUM, Mr. HUBBARD, Mr. TANNER, Mr. HUCKABY, and Ms. SNOWE.

H. Con. Res. 210: Mr. DUNCAN.

H. Con. Res. 224: Mr. FAWELL, Mr. SARPALIUS, Mr. SANTORUM, and Mr. UPTON.

H. Res. 21: Mr. MCCANDLESS.

H. Res. 107: Mr. MINETA.

H. Res. 215: Mr. KOLTER and Mr. SHAYS.

H. Res. 222: Mr. FISH.

H. Res. 257: Mr. CHAPMAN.